THE LAW OF TEXAS NOW IN FORCE

TOUCHING

CONVEYANCING AND REGISTRATION:

INCLUDING THE STATUTES, AND

DECISIONS OF THE SUPREME COURT

OF THAT STATE, AS TO

THE SUBSTANCE, FORM, AUTHENTICATION AND REGISTRATION OF DEEDS AND OTHER WRITTEN INSTRUMENTS AUTHORIZED BY LAW TO BE RECORDED, TO HAVE EFFECT AS CONSTRUCTIVE NOTICE.

Compiled and Edited by

WILLIAM ALEXANDER,

formerly Attorney General, etc.

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AUSTIN, TEXAS:
JOSEPH A. NAGLE, PUBLISHER.
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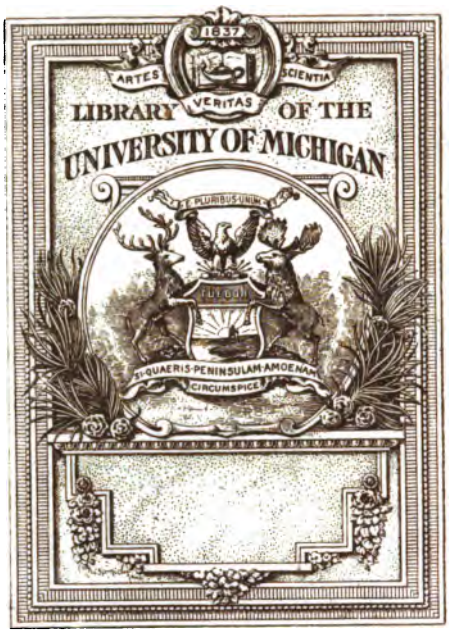

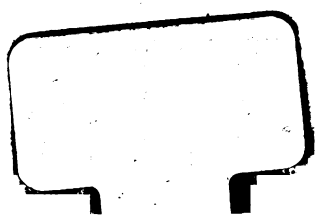

Hon Judge Cole
with the compliments of
The Compiler

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167

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TO THE

JUDGES OF THE SUPREME COURT,

THE JUDGES OF THE DISTRICT COURTS,

THE CLERKS OF DISTRICT AND COUNTY COURTS,

THE NOTARIES PUBLIC,

AND THE

JUSTICES OF THE PEACE AS EX OFFICIO NOTARIES PUBLIC,

OF THE STATE OF TEXAS,

Who are the officers within that State authorized, under the Constitution of 1876, to take acknowledgments and proofs for record—an official list of whom is to be found in the Appendix—this volume is respectfully inscribed by the Compiler and Editor,

WILLIAM ALEXANDER,

Counsellor-at-Law,

City of Austin, Texas.

In the Preface, on the following page, for "Section 14 of Chapter 84," read Section 4 of Chapter 84; and for Sections 6, 8, read Sections 6, 7.

PREFACE.

This volume is intended to be used as a book of reference by all who have anything to do with conveyancing and registration.

It has been made as brief as possible, so that the existing law may be readily found by those who are not lawyers; and in general, the kind of type employed has been made to show the character of the matter.

It has been prepared by reducing the MS. designed for a much larger work, giving the earlier law and tracing its modification down to the present time; hence it may, owing to the omissions made, appear not to be so full as might be desired. It is intended to contain only the law now in force. Where any repealed or unconstitutional laws, or sections thereof, are inserted, it is done because it was unavoidable, and solely to construe the existing law. Certain references have not been made, because foreign to the scope of this work and because of doubts as to their validity. For example: Section 14 of Chapter 84 of the General Laws of 1876 is not cited on page 97, § 37, c, because it does not in terms amend or repeal any part of "An Act concerning wills," of March 16, 1840, 167, Secs. 6, 8 (P. D., 914, 915, Arts. 5366, 5367), and it is not clear that under the Constitution the general repealing clause could have either an amending or repealing effect. (See Neill v. Keese, 5 Texas, 23.)

TABLE OF SUBJECTS

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INTRODUCTION.

(*a.*) One who seeks to purchase lands in Texas, if he proceeds in a business-like manner, will, as a matter of economy and safety, obtain an abstract of title, as well as the title papers, of the party wishing to sell, and take the advice of his counsel thereon before contracting. By so doing, he may, at a trifling cost, avoid the risk of serious loss, especially when the title is deraigned through an estate. If he contemplates buying on a credit, he needs to know what stipulations in the agreement for purchase, or what covenants in the title bond, are needed for his full protection. If he expects to consummate the purchase at once by paying the purchase money and taking a deed, it is essential that he should be advised what covenants, in addition to, or independent of, the covenant of general warranty, should be embodied in the deed in order to hold him harmless in any contingency.

(*b.*) The covenant of general warranty has but a limited scope, beyond which it cannot be extended by construction. As courts cannot make contracts for parties, it cannot be construed to cover the ground embraced in the covenant of seizin, the covenant of a good right to convey, the covenant against incumbrances, the covenant for quiet enjoyment, the covenant for further assurance, the special covenants suggested in § 14, r, or, indeed, any other covenant *not* inserted in the deed.

(*c.*) The certificates of acknowledgment or of proof and of registration should also be submitted to counsel.

(*d.*) The aim of a purchaser in general is to obtain the fee simple title—not the title to a less estate than a fee simple, or merely an equitable title. It is true that he can maintain trespass to try title on a merely equitable title in the courts of Texas, but not in the United States courts of Texas. (Sheirburn v. DeCordova *et al.*, 24 How., 425–6.) By neglecting to have his deed witnessed by "two or more credible witnesses," he can get less than a fee simple title. The *proviso*—for it has been held a *proviso* or condition (see *infra*, § 16, p)—"if the same be executed in the presence of, and subscribed by, two or more credible witnesses," under the rule *expressio unius exclusio alterius*, amounts to a statement that the instrument, no mat-

ter how worded, shall *not* be valid and effectual to convey from one person to another the fee simple of any land or real estate where it is not witnessed as the Act concerning conveyances prescribes.

(*e.*) The maxim *communis error facit jus* does not heal the lack of subscribing witnesses or of a seal (or scroll as its substitute).*

In point of fact, it is not, and never has been the common error to have deeds executed without subscribing witnesses and without seals or scrolls. The majority of conveyances in Texas have always been witnessed and sealed, as the Act Concerning Conveyances requires.

Besides, it is the duty of the legal adviser of a purchaser to see to it that the conveyance he approves, whether it be of the fee simple or of a less estate, or merely of an equitable title, as may be agreed upon between the parties, should be in all respects guarded against the possibility of a successful attack; and to that end, the subscribing witnesses and the seal (or scroll as its substitute) are alike essential.

(*f.*) In many instances, especially where, from want of time or other cause, an abstract of title and the title papers cannot be had, a prudent counsel will advise his client not to contract for the purchase of land unless the agreement, title bond or deed provides for the payment of liquidated damages in case of a failure of the title. The mere interest on the purchase money from the time of its payment is in many cases not sufficient to secure the purchaser from loss, and a contract for liquidated damages has been held to be legal.†

(*g.*) It is believed that where the title purchased is shown of record to be defective, the purchaser cannot recover on his covenant

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* Calling an instrument a deed which is not a deed does not make it a deed. A deed is defined "a writing or instrument under seal, containing some contract or agreement, and which has been delivered by the parties." (Co.-Litt., 171; 2 Bl. Com., 295; Shep. Touch., 50.) This applies to all instruments in writing, under seal, whether they relate to the conveyance of lands or any other matter; a bond, a single bill, an agreement in writing, or any other contract whatever when reduced to writing, which writing is sealed and delivered, is as much a deed as any conveyance of land. (2 Serg. & Rawle, 504; 1 Mood Cr. Cas., 57; 5 Dana, 365; 1 How. Miss. R., 154; 1 McMullen, 373.) Signing is not necessary at common law to make a deed. (2 Ev. Poth., 165; 11 Co. Rep., 27-8; 6 S. & R., 311.")—1 Bouvier's Law Dic., "Deed," 386.

By the Mexican law an instrument corresponding with a common law deed was a more formal and better authenticated instrument than a deed at common law. It had to be executed before and authenticated by a judge, or a notary public having ampler powers than a notary in a common law country—on stamped paper, to be duly signed—a paraph (rubrica) being appended to each signature—and witnessed. The original ("protocolo") remained with the officer and constituted the record.—(Vease Escriche Megicana, "Instrumento Publico.")—ED.

† See Durst v. Swift, 11 Texas, 273.)

of general warranty until after eviction by suit, and that even in that case, where the plaintiff, having paramount title, by reason of his failure to pay State taxes (P. D. 807, Art. 5306), having been proven by the defendant, is precluded from judgment for mesne profits, the defendant cannot recover from his vendor interest on the purchase money from the date of its payment.

(*h.*) They who seek to ascertain and put in execution the best methods of preparing, causing to be authenticated, deposited for record in the county where they will give constructive notice, and recorded, deeds and other written instruments, will find this little compilation convenient for reference.

(*i.*) The list of all officers of Texas (under the Constitution of the State of Texas of 1876) authorized to take and certify acknowledgments and proofs for record, is more voluminous than was anticipated, but will be found useful, not only at present, but at all times in the future, for when a deed is submitted that appears to be duly certified, it will be satisfactory to know that he whose certificate is indorsed or annexed was at the time he certified actually an officer.

EXPLANATION.

Where a Statute, or a section of a Statute, or of the Constitution, *is given entire*, it is printed in Small Pica type.

The remarks of the compiler are in Bourgeois type.

The abstracts of the Decisions of the Supreme Court are in Brevier type.

The Notes are in Nonpareil type.

Hence from the type, in general, the character of the matter can be ascertained at a glance.

ERRATA.

On page 29, § 14, i, after the words "his heirs and assigns, against," read "every" instead of "any."

On page 61, § 23, b, 1, after the word witness, read "or witnesses known to the officer."

THE LAW OF CONVEYANCING, ETC.

THE OBJECT, SCOPE AND ARRANGEMENT OF THIS WORK.

§ 1. The purpose of this compilation is to give the law in force in Texas—not the law of any other State--whether in the form of statutes or decisions of the Supreme Court, touching conveyancing and registration. The Acts exclusively relating to conveyances of land are first inserted entire, so that they may be construed together as a whole. They will be followed by the sections of Acts and references to decisions of the Supreme Court of Texas, relating to the substance, form, authentication and registration of conveyances or deeds, and also of such other written instruments as are required by law, in order that they may have effect as constructive notice, to be registered in the proper clerks' offices of the county courts—and not elsewhere.

For convenience, the law as to conveyances, etc., of real estate is presented in the order in which it would naturally have to be ascertained on investigation by one who, for the first time, has to prepare a deed and have it duly executed, certified and delivered for registration.

The law as to other written instruments, than such as absolutely convey land, follows.

Certain additional Forms, adapted to the requirements of the people of this State, may be found in the Appendix.

§ 2. AN ACT TO PREVENT FRAUDS AND FRAUDULENT CONVEYANCES.

(*a.*) Section 1. *Be it enacted by the Senate and House of Representatives of the Republic of Texas, in Congress assembled,* That no action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer any debt or damage out of his own estate, or whereby to charge the defendant, upon any special promise, to answer for the debt, default or miscarriage of

another person, or to charge any person, upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, slaves, tenements or hereditaments, or the making any lease thereof for a longer term than one year, or upon any agreement which is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith, or some person by him thereunto lawfully authorized.

(*b.*) Sec. 2. *Be it further enacted*, That every gift, grant or conveyance of lands, slaves, tenements, hereditaments, goods or chattels, or of any rent, common or profit out of the same, by writing or otherwise, and every bond, suit, judgment or execution had or made and contrived of malice, fraud, covin, collusion or guile, to the intent or purpose to delay, hinder or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures, or to defraud, or to deceive those who shall purchase the same lands, slaves, tenements or hereditaments, or any rent, profit or commodity out of them, shall be from henceforth deemed and taken only as against the person or persons, his or her or their heirs, successors, executors, administrators or assigns, and every of them whose debts, suits, demands, estates, interests, by such guileful and covinious devices and practices as is aforesaid, shall or might be in anywise disturbed, hindered, delayed or defrauded, to be clearly and utterly void; any pretense, color, feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding; and moreover, if any conveyance be of goods or chattels or slaves, and be not, on consideration, deemed valuable in law, it shall be taken to be fraudulent within this act, unless the same be by will duly proved and recorded, or by deed in writing, or other instrument acknowledged or proved, if the same deed or instrument of writing include lands also acknowledged or

proved in such manner as conveyances of lands are by law directed to be acknowledged or proved, or if it be goods and chattels or slaves only, then acknowledged or proved by two or more witnesses and recorded in the manner as now established by law, or may hereafter be established, for the recording of deeds of conveyances of real estate in this Republic, or unless possession shall really and *bona fide* remain with the donee; and in like manner, when any loan of goods and chattels or slaves shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained by the space of three years, without demand made and pursued by due process of law on the part of the pretended lender, or when any reservation or limitation shall be pretended to have been made of a use or property, by way of condition, reversion, remainder or otherwise in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken, as to the creditors and purchasers of the persons aforesaid so remaining in possession, to be fraudulent within this act, and that the absolute property is with the possession, unless such loan, reservation or limitation of use or property were declared by will, or by deed in writing, proved and recorded as aforesaid.

(*c.*) Sec. 3. *Be it further enacted*, That the second section of this act shall not extend to any estate or interest in any lands, goods, chattels, slaves, or any rents, common or profit out of the same, which shall be, upon good consideration and *bona fide* lawfully conveyed or assured to any person or persons, bodies politic or corporate.

Approved January 18, 1840.—(pp. 28, 29.)

§ 3. AN ACT CONCERNING CONVEYANCES.*

(*a.*) Section 1. *Be it enacted by the Senate and House*

*The reader must satisfy himself, by reference to the Acts and Digests, what sections of this Act are in force. Section 3 is *not* repealed. Sections 6 and 10 appear to be repealed, while sections 9 and 11 seem to be repealed and supplied by the Code—ED.

of Representatives of the Republic of Texas, in Congress assembled, That no estate of inheritance or freehold, or for a term of more than five years, in lands and tenements, shall be conveyed from one to another, unless the conveyance be declared by writing, sealed and delivered; and any instrument to which the person making the same shall affix a scroll, by way of seal, shall be adjudged and holden to be of the same force and obligation as if it were actually sealed; *provided*, the person making the same shall, in the body of the instrument, recognize such scroll as having been affixed by way of seal; nor shall such conveyance be good against a purchaser for valuable consideration, not having notice thereof; nor any creditor, unless the same writing be acknowledged by the party or parties who shall have sealed and delivered it, or proved by two witnesses to be his, her or their act, before the county court of the county in which the land conveyed, or some part thereof, lieth; or in the manner hereinafter directed, and be lodged with the clerk of the county court to be recorded.

(*b.*) Sec. 2. *Be it further enacted*, That no covenant or agreement made in consideration of marriage shall be good against a purchaser for a valuable consideration, not having notice thereof, or any creditor, unless the same covenant or agreement be acknowledged by the party to be bound thereby, or proved by two witnesses to be his, her or their act; if land be charged before the court of the county in which the land, or part thereof, lieth; or if personal estate only be settled, or covenanted, or agreed to be paid or settled before the court of that county in which such personal estate shall remain, and before the court of the county in which the married parties may reside (if they reside in another county), or in the manner hereinafter directed, and be lodged with the clerk of the county court in which such property may remain, and in which such married parties may reside, to be recorded; and all the provisions of this act shall be complied with, notwithstanding anything that

may be contained in the eighth section of the Act to adopt the common law, etc., approved January 20, 1840.

(*c.*) Sec. 3. *Be it further enacted*, That in no case shall livery of seizin, or the placing the purchaser in possession, be necessary to pass any freehold estate in lands.

(*d.*) Sec. 4. *Be it further enacted*, That all bargains, sales, and other conveyances whatever, of any lands, tenements and hereditaments, whether they may be made for passing any estate of freehold or inheritance, or for a term of years; and deeds of settlement upon marriage, whether land, slaves, money, or other personal thing, shall be settled or covenanted to be left or paid at the death of the party or otherwise; and all deeds of trust and mortgages whatsoever, which shall hereafter be made and executed, shall be void as to all creditors and subsequent purchases for valuble consideration without notice, unless they shall be acknowledged or proved and lodged with the clerk, to be recorded according to the directions of this act, but the same as between the parties and their heirs; and, as to all subsequent purchasers, with notice thereof, or without valuable consideration, shall nevertheless be valid and binding.

(*e.*) Sec. 5. *Be it further enacted*, That the clerks of the several county courts of this Republic, and their deputies, shall be and they are hereby authorized and required to admit to record at any time, in the form required by this act, any conveyance, either on the acknowledgment of the party or parties, or the proof, on oath, of such acknowledgment by the legal number of witnesses thereto made, in the offices of the respective clerks; or upon the certificate of some district judge or chief justice, or notary public of a county, with the seal of his office thereunto annexed, that such acknowledgment was made, or the execution of the instrument proven as required above; and any conveyance so recorded shall have the same legal validity, in all respects, as if it were proven in open court.

(*f.*) Sec. 6. *Be it further enacted*, That any deed may

in like manner be admitted to record upon the certificate, under seal, of any two justices of the peace for any county in this Republic, annexed to such deeds, and to the following effect, to wit: Republic of Texas, county of ———. We, A. B. and C. D., justices of the peace in the county aforesaid, do hereby certify that E. F., a party (or E. F. and G. H., etc., parties) to a certain deed bearing date on the ——— day of ———, and hereto annexed, personally appeared before us in our county aforesaid, and acknowledged the same to be his (or their) act and deed, and desired us to certify the said acknowledgment to the clerk of the county of ———, in order that the said deed may be recorded. Given under our hands and seals this ——— day of ———.

A. B. [L. S.]
C. D. [L. S.]

(*g.*) Sec. 7. *Be it further enacted*, That every title, bond, or other written contract in relation to lands, may be proved, certified or acknowledged and recorded, in the same manner as deeds for the conveyance of land, and such proof, acknowledgment or certificate, and the delivery of such bond or contract to the clerk of the proper court, to be recorded, shall be taken and held as notice to all subsequent purchasers of the existence of such bond or contract.

(*h.*) Sec. 8. *Be it further enacted*, That hereafter every partition of any tract of land, or lot, made under any order or decree of any court, and every judgment or decree by which the title to any tract of land, or lot, shall be recovered, shall be duly recorded in the clerk's office of the county court of the county in which such tract of land, or lot, or part thereof, shall be; and until so recorded, such partition, judgment, or decree, shall not be received in evidence in support of any right claimed by virtue thereof.

(*i.*) Sec. 9. *Be it further enacted*, That any witness who, in proving the acknowledgment of any deed recorded in the manner herein described, shall willfully and cor-

ruptly forswear himself, shall be deemed guilty of perjury; and shall be subjected, on conviction thereof, to the same punishment as if such perjury had been committed in open court.

(*j.*) Sec. 10. *Be it further enacted*, That the several clerks aforesaid shall, on the first day of every term of their respective courts, return to the courts a correct and complete list of all deeds by them admitted to record in the manner aforesaid, since the term last preceding of their said courts, specifying therein the proof or acknowledgment of such deed before them (as the case may be), and also particularly reciting the truth of the case in relation to any deed which may have been admitted to record, upon the certificates of magistrates as aforesaid, and setting forth therein a description of each deed, by the names of the parties thereto, and the kind of property therein mentioned; which list, having been inspected by the court, shall be inserted in the minutes of the proceedings of the day, and read therewith in open court; and the said clerks shall moreover cause a fair copy of such lists of deeds to be set up by ten o'clock A. M. of the day in which such return is made, at the principal door of their respective court houses.

(*k.*) Sec. 11. *Be it further enacted*, That any clerk failing to make the return aforesaid, or to advertise a copy thereof in the manner herein prescribed, shall forfeit and pay, for every such neglect of duty, the sum of one hundred dollars, recoverable with costs on action or information, in the district court of the county in which such clerk has his office; one moiety to the informer, or person suing for the same, and the other to the Republic.

(*l.*) Sec. 12. *Be it further enacted*, That every deed respecting the title of personal chattels hereafter executed, which by law ought to be recorded, shall be recorded in the clerk's office of the county court of that county in which the property shall remain; and if afterwards the person claiming the title under such deed shall permit any other person in whose possession such property may, be to re-

move with the same, or any part thereof, out of the county in which such deed shall be recorded, and shall not, within four months after such removal, cause the deed aforesaid to be certified to the county court of the county in which such other person shall so have removed, and to be delivered to the clerk to be there recorded, such deed, for so long as it shall not be recorded in such last mentioned county, and for so much of the property aforesaid as shall be removed, shall be void in law as to all purchasers thereof for valuable consideration, without notice, and as to all creditors.

(*m.*) Sec. 13. *Be it further enacted*, That every conveyance, covenant, agreement, deed, deed of trust, or mortgage, in this act mentioned, which shall be acknowledged, proved or certified, according to law, and delivered to the clerk of the proper court to be recorded, shall take effect, and be valid as to all subsequent purchasers for a valuable consideration, without notice; and as to all creditors, from the time when such instrument shall be so acknowledged, proved, or certified and delivered to such clerk to be recorded, and from that time only.

(*n.*) Sec. 14. *Be it further enacted*, That all alienations of real estate, made by any person purporting to pass or assure a greater right or estate than any such person may lawfully pass, or assure, shall operate as alienations of so much of the right and estates in such lands, tenements, or hereditaments, as such person might lawfully convey, but shall not pass or bar the residue of said right or estate purporting to be conveyed or assured; nor shall the alienation of any particular estate on which any remainder may depend, whether such alienation be by deed or will; nor shall the union of such particular estate with the inheritance by purchase or by descent, so operate as to defeat, impair, or in any wise to affect such remainder.

(*o.*) Sec. 15 *Be it further enacted*, That every estate in lands which shall hereafter be granted, conveyed or devised to one, although other words heretofore necessary at common law to transfer an estate in fee simple be not added,

shall be deemed a fee simple, if a less estate be not limited by express words, or do not appear to have been granted, conveyed or devised by construction, or operation of law.

(*p.*) Sec. 16. *Be it further enacted*, That the following form or purport of a release, or the said form in substance, shall, to all intents and purposes, be valid and effectual to convey from one person to another the fee simple of any land or real estate, if the same be executed in the presence of and subscribed by two or more credible witnesses:

The Republic of Texas—

Know all men by these presents, that I, ————, of the ——— in the Republic aforesaid, in consideration of ——— dollars and cents, to me paid by ———, of ———, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said ——— all that (here describe the premises), together with all and singular the rights, members, hereditaments and appurtenances to the same belonging, or in any wise incident or appertaining, to have and to hold, all and singular, the premises above mentioned, unto the said ————, his heirs and assigns forever; and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises, unto the said ————, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

Witness my hand and seal this ——— day of ——— in the year of ———.

Signed, sealed and delivered in presence of ——. [L. S.]

Provided, that no person shall be obliged to insert the clause of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter to be made, that may be deemed proper and advisable by the purchaser and seller; and that other forms not contravening the laws of the land shall not be invalidated.

(*q.*) Sec. 17. *Be it further enacted*, That all conveyances by commissioners, sheriffs, or other officers legally authorized to sell land, hereafter to be made, for lands sold in virtue of any decree, or judgment of any court within this Republic, shall be, and they are hereby declared to be good and effectual for passing the absolute title to such lands to the purchasers thereof; and all persons claiming under them, any law to the contrary notwithstanding, saving to the Republic; and to all and every person or persons, bodies politic and corporate, their respective heirs and successors, other than the parties to such conveyances, decrees or judgments, and those claiming under them, all such right, title, interest and demand, they, every or any of them, would have had in case this act had not been made.

(*r.*) Sec. 18. *Be it further enacted*, That an estate of freehold or inheritance may be made, to commence, *in future*, by deed, in like manner as by will.

Approved February 5, 1840.—(pp. 153–158.)

§ 4. It is to be borne in mind that sections 14 and 15 of the "Act concerning conveyances" are applicable to all deeds conveying land, and should never be lost sight of when a conveyance is to be prepared.

(*a.*) Section 14 precludes a grantor who has not a fee simple title from passing by deed a greater title than he has.

(*b.*) Section 15 causes the holder of a fee simple title, when he conveys, to convey the same, if a less estate be not limited by express words or by operation of law.

(*c.*) Section 3, which, though omitted in the digests, has never been repealed, by providing "that in no case shall livery of seizin, or placing the purchaser in possession, be necessary to pass any freehold estate in lands," appears to do away with the common law as to champerty and maintenance touching freehold estates.

(*d.*) Land in adverse possession may be conveyed by a party out of possession.—*Carder* v. *McDernett*, 12 Texas, 546.

(*e.*) *Quere.* Whether the English law in respect to champerty and maintenance is in force in this State? If it were, the fact that plaintiff had parted with his title or claim, under a champertous contract, to a

third person, for whose benefit the suit was alleged to be prosecuted, would not defeat a recovery.—*McMullen* v. *Guset*, 6 Texas, 275.

(*f*.) The principles of the common law are not contravened by the purchase of the whole interest of another in a contract, security, or other property, although the same may be in litigation, provided the purchaser does not undertake to pay costs or make advances beyond what is necessary to support the exclusive interest which he has acquired. Such purchase is not obnoxious to the imputation of either champerty or maintenance.—*White* v. *Gay's Exrs.*, 1 Texas, 384.

(*g*.) All contingent and executory interests are assignable in equity, and will be enforced if made for a valuable consideration; and all contingent estates of inheritance, as well as springing and executory uses and possibilities coupled with an interest, where the person to take is certain, are transmissible by descent, and devisable and assignable.—*Nimmo* v. *Davis*, 7 Texas, 26.

OF PAROL SALES OF LAND.

§ 5. Notwithstanding the express provisions of the foregoing Acts, it is well settled that title by purchase to real estate may be acquired without any written contract or conveyance whatever, under the circumstances set forth in the cases cited below.

(*a*.) For the special circumstances under which a parol sale of land was enforced, see Castleman v. Sherry, 42 Texas, 28.

(*b*.) A parol agreement for the sale of land before the issuance of patent, where possession was delivered, and vendor's heirs afterwards obtained patent and possession, held good.—*Howe's heirs* v. *Rogers*, 32 Texas, 218.

(*c*.) An agreement to divide or partition lands is not within the statute of frauds, and need not be in writing.—*Smock* v. *Tandy*, 28 Texas, 130.

(*d*.) A parol assignment of a title bond for land, upon a full and valuable consideration, entitles the assignee to institute and maintain an equitable action in his own name; and the statute of frauds cannot be interposed to defeat the recovery of such assignee.—*Bullion* v. *Campbell*, 27 Texas, 653.

[*Query:* Is this law? Besides, is not the phrase "a parol *assignment*" a solecism?—ED.]

(*e*.) A vendor, by a parol sale of land, who puts the purchaser in possession, if he takes advantage of the statute of frauds, must pay for improvements.—*Thouvenin* v. *Lea*, 26 Texas, 612. [?—ED.]

(*f*.) A party in possession of land under a parol agreement for its sale, who has paid nearly all the purchase money and made improvements, held to be entitled to a specific performance.—*Neatherly* v. *Ripley*, 21 Texas, 434.

(*g.*) Verbal sales of land were valid before the passage of the Act of 1840; and a verbal sale by the wife, with the consent of the husband, was valid under the laws in force prior to 1840.—*Monroe* v. *Scarcy*, 20 Texas, 348.

(*h.*) A parol partition of land by a married woman or a minor having an interest therein, held good as against a purchaser.—*Stuart* v. *Baker*, 17 Texas, 417.

(*i.*) A parol sale of land, where the purchase money is paid by the vendee in possession, will be enforced.—*Ottenhouse* v. *Burleson*, 11 Texas, 87.

(*j.*) Previous to the passage of the statute of frauds of January 18, 1840, a parol sale of lands, accompanied by possession, passed a title as valid and legal as a written conveyance.—*Briscoe* v. *Bronaugh*, 1 Texas, 326.

(*k.*) By the laws of Spain, parol evidence is admissible to establish the alienation or acquisition of immovable property.—*Scott* v. *Maynard*, Dallam, 548.

(*l.*) A verbal sale of land, in 1839, accompanied by possession on the part of the vendee, was valid.—*Id.*

(*m.*) A verbal sale of wild and unoccupied lands in Texas, in 1834, might be a good and valid sale, notwithstanding that no actual delivery of possession either accompanied or followed the sale.—*Welder* v. *Hunt*, 34 Texas, 44.

(*n.*) A vendee in possession under a parol contract for the sale of land entitled to a decree for specific performance.—*Reynolds* v. *Johnson*, 13 Texas, 214.

(*o.*) A parol gift of lands, followed by possession and large expenditure in improvements—not mere permissive occupation—is sufficient.—*Murphy* v. *Stell*, 43 Texas, 124.

OF NOTICE.

§ 6. The title to land is effectually transmitted by signing, sealing and delivering the deed. That is sufficient as between the parties and all having actual notice. The object of registration is to give constructive notice—"such notice as, though it be not actual, is sufficient in law." (Bouvier's Law Dictionary, "Notice.") § 3, l, m.

(*a*) To pass the mere legal title, it is not necessary that the conveyance should be recorded. The title is effectually transmitted by signing and delivering the deed. The record is to protect creditors and subsequent purchasers. (P. D., 650, Art. 3876, notes 907, 908 and 909.)—*Portis* v. *Hill*, 30 Texas, 529.

(*b.*) Actual notice is when the party has knowledge of the fact.—*Hawley* v. *Bullock*, 29 Texas, 216.

(*c.*) Constructive notice is brought home to the party by the registration of the title papers, or when he is put upon inquiry by any circumstances which, by the exercise of ordinary diligence and judgment, would

lead to a knowledge of the fact; such circumstances make it the duty of the party to make inquiries. (P. D., 864, Art. 4983 note 1092.) Possession, in person or by agent, is a sufficient circumstance.—*Id.*

(*d.*) The recording of instruments not required, or affirmatively permitted, by law to be recorded, is not notice.—*Burnham* v. *Chandler*, 15 Texas, 441.

WHAT WRITTEN INSTRUMENTS ARE REGISTRABLE.

§ 7. The law in force in Texas requires or affirmatively permits the written instruments hereinafter named, in order that they should have effect as constructive notice (where not already records), to be executed, acknowledged or proved, certified under an official seal, and deposited in the clerk's office of the county court of the proper county to be recorded.

The instruments referred to are, conveyances, or deeds of the fee simple title, or of any less estate of land; covenants to make title, or title bonds for land; leases (when for more than a year) of lands, tenements or hereditaments; agreements affecting the title to, or use of, land; deeds of trust of land; mortgages of land; judgments and decrees of partition of land, or by which the title to land has been recovered; judgments, when to operate as liens upon land; wills disposing of, incumbering, or in any manner rendering necessary the disposal of land; marriage licenses and the returns thereon; marriage contracts, whether embracing land or personal property or both; schedules of the separate property of married women; powers of attorney, when intended to have effect as constructive notice; deeds respecting the title of personal chattels; deeds of trust and mortgages of personal property; and certain named official bonds.

The ear-marks and brands of live stock (*fac similes* and descriptions), copies of deeds, etc., the originals of which remain in the public archives, duly certified by the proper officer, of all titles recorded in the General Land Office, and of all titles issued by the Commissioner of that office, when attested by its seal, are also admissible of record.

OF CONVEYANCES OR DEEDS OF LAND IN GENERAL.

WHAT ARE AND WHAT ARE NOT ABSOLUTE DEEDS OF LAND.

§ 8. The statute of frauds (§ 2), which requires deeds to be signed, the Act concerning conveyances (§ 3), which requires them to be sealed and delivered, and the "Act to adopt the common law of England," etc. (of January 20, 1840, p. 3; P. D., 254, Art. 978), which repealed all laws in force prior to September 1, 1836, except a few clearly indicated, must be construed together, as they took effect on the same day—March 16, 1840. (See "An Act fixing the time," etc., of January 16, 1840, 6, which took effect from its passage. P. D., 753, Art. 4576.)

(*a.*) By these Acts, the common law as to conveyancing, as modified by the Act concerning conveyances (§ 3), became the law of conveyancing in Texas. Indeed, as the Mexican laws as to conveyancing were repealed on March 16, 1840, no other than the common law mode, as modified by the Act referred to and the later Acts touching the conveyance of the separate property of married women,* has since been possible.

(*b.*) The form of conveyance given in section 16 of the Act concerning conveyances (§ 3), is a common law form. The language of the closing part of that section—that no person shall "be restrained from inserting any clause or clauses in conveyances hereafter to be made that may be deemed proper and advisable by the purchaser and seller"—shows that the common law forms of conveyancing were intended to be introduced in the amplest manner. So were the common law rules of construction.

(*c.*) A conveyance or deed of land signifies an absolute conveyance of the fee simple, or of some specified less estate, as distinguished from a mere incumbrance, such as a mortgage; or an equitable title, such as a title bond.

(*d.*) A written instrument which, while it embodies the words of an absolute conveyance, proceeds to retain a lien for unpaid pur-

*See "An Act prescribing the mode in which married persons may dispose of their separate property," of February 3, 1841, 144; and "An Act defining the mode of conveying property in which the wife has an interest," of April 30, 1846, p. 156; P. D., 261, Art. 2003.

chase money, or any executory contract showing that it is not final, is not an absolute deed. It is less. A deed absolute on its face may be proven to be only a mortgage, and any contemporaneous contracts in writing between the parties may be regarded as one transaction, and competent proof may be made to determine and fix its real character; though, in the absence of fraud or mistake, parol declarations varying or contradicting a written contract are inadmissible.

In all cases where a deed is attacked, an affidavit must be made in order to lay the foundation for proof. (P. D., 148, Art. 228; 605, Art. 3716; and 354, Arts. 1442, 1443.)

(*e.*) That a deed absolute on its face may be controlled by parol evidence showing that it was intended as a mortgage, has long been settled in this State.—*Gibbs* v. *Perry*, 43 Texas, 560.

(*f.*) In the absence of fraud or mistake, it is not admissible to admit parol declarations varying or contradicting a written contract.—*Donley* v. *Bush*, 44 Texas, 1.

(*g.*) A deed from a father to some of his children to whom he is indebted, and from them to others to whom there is none, may be considered as one transaction, and, to the extent of the second transfer, a deed of gift. *Hughes* v. *Roper*, 42 Texas, 116.

(*h.*) Deeds executed in contemplation of death, and forming a part of a testamentary disposition, will be construed as part of such will.—*Woodall* v. *Rudd*, 41 Texas, 375.

(*i.*) An instrument purporting to convey land, which upon its face discloses that it was intended as a security that the title should be made to another tract and as an indemnity against a lien on such other tract, is a mortgage, though it may recite that upon failure to discharge the lien the instrument shall "remain in force and virtue as a deed."—*Beale* v. *Ryan*, 40 Texas, 399.

(*j.*) A deed absolute on its face may be shown to have been intended to operate as a conveyance in trust, etc.—*Reeves* v. *Bass*, 39 Texas, 618.

(*k.*) A contract, though absolute on its face, for a part of land to be located, etc., is not a deed, but is an executory contract.—*Bell* v. *Warren*, 39 Texas, 106.

(*l.*) When a deed retains a lien on land sold to secure the payment of purchase money, it does not invest the vendee with absolute title, nor with the right of possession as against the vendor, until the purchase money be actually paid; and, until then, the vendee cannot maintain suit against the vendor for possession.—*Caldwell* v. *Fraim*, 32 Texas, 310.

(*m.*) Under our system of jurisprudence, the vendor, in such case, occupies the double attitude of vendor and mortgagee until the payment of the purchase money.—*Id.*

(*n.*) In this State, a perfect title is the union of both the legal and

equitable title, which may be accomplished in our courts in any proper case, if the necessary parties are brought in.—*Id.*

(*o*.) Where a deed of conveyance, a mortgage to secure the purchase money, and a power of attorney to locate and sell a tract of land were all given about the same time, and were between the same parties, the three instruments will be construed as one contract.—*Eppinger* v. *McGreal*, 31 Texas, 147.

(*p*.) When a deed and another contract were executed in reference to real estate on the same day, they are to be construed together, in order to determine whether the transaction was a conditional sale or a mortgage.—*Ruffier* v. *Womack*, 30 Texas, 332.

(*q*) If the contract be originally a mortgage, it remains a mortgage.—*Id.*

(*r*.) Conditional sales allowable, if such be the intention of the parties.—*Id.*

(*s*.) The legal title remains in the mortgagee when he is the vendor of land.—*Baker* v. *Clepper*, 26 Texas, 629.

(*t*.) The doctrine that a deed absolute on its face may be proved by parol evidence to be intended as security for a debt, and therefore a mortgage, is well settled.—*Mann* v. *Falcon*, 25 Texas, 261.

(*u*.) The payment of the purchase money is the essential constituent of title to real estate.—*Robertson* v. *Paul*, 16 Texas, 472.

(*v*.) Repeated decisions of this court have held that a mortgage is but a security, and that the title remains in the mortgagor, subject to be divested by the foreclosure of the mortgage. In this respect the deed of trust does not differ from a mortgage.—*Wright* v. *Henderson*, 12 Texas, 43.

(*w*.) It is a familiar principle that two or more writings executed contemporaneously, between the same parties and in reference to the same subject matter, must be deemed one instrument and as forming but the same contract.—*Dunlap* v. *Wright*, 11 Texas, 597.

(*x*) A deed absolute on its face will be valid and effectual as a mortgage, as between the parties, if it was intended by them to be merely a security for a debt.—*Carter* v. *Carter*, 5 Texas, 93; *Stephens* v. *Sherrod*, 6 Texas, 294.

(*y*.) If the circumstances show that a deed was given as security for the payment of money, it will be treated as a mortgage, no matter what the terms may be in which it is written.—*Stamper* v. *Johnson*, 3 Texas, 1.

OF THE REQUISITES OF A CONVEYANCE OR DEED PASSING THE ABSOLUTE TITLE TO LAND FROM ONE TO ANOTHER, WHERE THE LAND IS NOT A HOMESTEAD OR THE PROPERTY OF A MARRIED WOMAN.

PRELIMINARY REMARKS APPLICABLE TO ALL DEEDS, AND ESPECIALLY TO ABSOLUTE DEEDS.

§ 9. (*a.*) By the common law, a conveyance or deed, "in its more confined sense, signifies a writing by which lands, tenements and hereditaments are conveyed, which writing is sealed and delivered." (Bouvier's Law Dictionary, "Deed," 386.) 1. It must be written or printed on parchment or paper. (2 Litt., 229, a; 2 Bl. Com., 297.) Our statutes (see § 2, a) require it to be "in writing and *signed*" in order *that it may be actionable*, and (see § 3, a) in order that the estate should pass, that it be conveyed "by writing, *sealed and delivered.*"

(*b*) That the deed should be legible, is apparent by analogy from the language of the court in Vance v. Hague, 35 Texas, 432, and from the ruling in Wooten v. Dunlap, 20 Texas, 183.

(*c.*) It may be here remarked that deeds, and, indeed, all title papers to land, should be as indestructible in every respect as possible. They should be made out on printed blanks, or else wholly written, on *parchment paper* of "cap" size, so as to be conveniently transmissible by mail, and to go into ordinary files of papers in court. That species of paper is preferable to parchment itself. It does not shrink and become as hard as horn, as parchment does, when exposed to great heat. It is not so tempting to destructive insects, and is slower in decaying from all natural causes. Besides, it can be bent repeatedly in every direction, like a bank note, without breaking, when good cap paper, under the same circumstances, would fall to pieces.

(*d.*) The ink used in conveyancing should be banker's ink, or good ordinary ink in which India (not sepia) ink is thoroughly mixed. Such ink cannot be taken out without visibly injuring the paper (as ordinary ink can) by any chemical agency.

(*e.*) The deed poll, as it is termed by the common law, (which is a deed made by one party only, and is not indented, but polled or shaved quite even, and for this reason is called a *deed poll*) or single

deed of bargain and sale of land, is the form of conveyance given in the Act concerning conveyances (§ 3, p), and is the form of conveyance almost universally in use in this State. The statutory form, erroneously termed in the Act a "form or purport of a release" (which it is not, a *release* being a totally different instrument), is well adapted to the use of the vendor only who may wish to convey with the least possible future responsibility, especially as by adding the words "by, through or under me" he can convert the warranty clause from a covenant of *general* to a covenant of *special* warranty, and at the same time can omit to insert any of the common or special covenants herein mentioned and indicated.

(*f*.) As the purchaser, on the other hand, naturally seeks to be as fully protected as possible, before a sale of land can be consummated by the execution and delivery of a deed, the parties contracting have to agree as to what recitals and covenants are to be incorporated in the deed. It is always the safer practice that a distinct agreement or memorandum of agreement, signed, sealed and witnessed, accompanied by the title papers, or where they cannot be had, that an abstract of title from the county records, should be placed in the hands of the conveyancer for his guidance in the preparation of the deed.

(*g*.) At common law all title deeds pass with the land. The purchaser of an entire tract is in general entitled to receive from the vendor such title papers to the land as he has or can control when the sale is consummated.

(*h*.) As original deeds are better evidence than certified copies made from the record, it is no small inducement to purchasers of real estate that they get with the land a complete chain of original deeds, or at least such as can be had, together with certified copies of such as may have been delivered to some prior purchaser of a part of the tract, or may be on file in a pending suit, or may have been casually lost or destroyed.

(*i*.) Such being the case, where a deed has to be sent by mail or otherwise to another county to be recorded, it is the safer practice to have it executed at least in duplicate, for then, in the event of its loss, and especially if in the meantime the vendor should die, no little trouble and no small expense would be avoided.

(*j*.) Where land is bought with a view to a subdivision and resale it is to the interest of the purchaser to obtain his deed in such numbers (in duplicate, triplicate, quadruplicate, etc., for example,) as would enable him to deliver an original to each sub-purchaser. Originals in duplicate, etc., need cost no more than certified copies,

and are far more desirable—being only impeachable on oath, and if impeached being more easily provable. (See § 8, d, and § 11, b.) They are invaluable in case the county records are destroyed by fire.

WHAT AN ABSOLUTE DEED FOR LAND, MAY CONTAIN, CONSIDERED SERIATIM.

§ 10. (*a.*) Without losing sight of the peculiar provisions of the Act concerning conveyances, of which section 3 repeals the common law as to "livery of seizin, or the placing the purchaser in possession," section 14 causes the less estate to pass when the grantor does not own the greater, section 15 causes the fee simple when owned by the grantor to pass by the deed "if a less estate be not limited by express words" (or by law), and section 18 declaring that "an estate of freehold or inheritance may be made to commence *in futuro* by deed in like manner as by will," it is to be noted that when "deemed proper and advisable by the purchaser and seller" a carefully drawn deed poll of bargain and sale of land may be framed to begin in the following terms, and may be made to contain clauses embodying any or all of the covenants hereinafter given and suggested:

The State of Texas, County of ———.

Know all men by these presents that I, —— ——, of the State and county above written, in consideration of the sum of ——— dollars ($——) to me actually in hand paid, the receipt of which is hereby acknowledged, by —— ——, of the county of ——— in the State of ———, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, convey and confirm unto said —— ——, all that certain tract or parcel of land situate in the county of —— and State of Texas, which is described as follows:—

(*c.*) As a deed must be made by a grantor or grantors and to a grantee or grantees (see *infra*, d), when it is drawn in the best possible manner it gives what can most conveniently identify them—their entire names, their residences and their occupations. (See *infra*, k.)

It is not indispensable that more than the initial or initials, such as a party ordinarily uses in signing letters, etc., followed by the surname, should be inserted, though it is preferable that the full names, residences and occupations of the parties should be given, and that the grantor should sign his full name, and not merely a part thereof.

(*d.*) In McCown v. Wheeler, 20 Texas, 372, the court decided that a deed left blank as to the name of the grantee and filled up after the ac-

knowledgment, whilst it would not operate as a deed, would be admissible in evidence of a contract of sale, and would take the case out of the statute of frauds in an action for specific performance—the ruling is approved.—*Kiser* v. *Rice*, 33 Texas, 156.[?—ED.]

(*e.*) It is no objection to the recovery of possession of a deed belonging to the plaintiff and unlawfully detained by the defendant, that such deed is executed with a blank for the name of the grantee.—*McCown* v. *Wheeler*, 20 Texas, 372.

(*f.*) Where a deed has been made by a party having the lawful authority to sell, the use by such person of a name different from that by which the party is usually known will not vitiate the title.—*Cordier* v. *Cage*, 44 Texas, 532. [But?—ED.]

(*g.*) The mistake of a name in one part of a document corrected by the context.—*Clay* v. *Holbert*, 14 *Texas*, 189.

(*h.*) Where one, purporting to act as the attorney for another, executes a deed in his own name, the deed will be sustained, if the person executing had authority to make a proper deed.—*Rogers* v. *Frost*, 14 Texas, 267.

[For a somewhat similar case, see Dantrey v. Knolle, 43 Texas, 450.]

The following cases are also cited by way of analogy.—ED.

(*i.*) A party signing by the initials of his Christian name may be sued in the same manner.—*Cummings* v. *Rice*, 9 Texas, 527.

(*j.*) Where the petition was against U. S. Cummings, and the citation was issued to and served upon Uriah Cummings, it was held that the variance between the petition and writ was immaterial.—*Id.*

(*k.*) The middle name or initial is not known in law, and will not be noticed, unless it should be made to appear that it has been the occasion of a different person from the one designated being injured thereby.—*McKay* v. *Speak*, 8 Texas, 376.

(*l.*) Where the certificate of the officer identified the witness who proved the deed for registration as the person who signed it, the certificate will be taken as *prima facie* true, although there be a discrepancy in the middle initial.—(P. D., Art. 4973, note 1084.)—*Page* v. *Arnim*, 29 Texas, 54.

OF THE CONSIDERATION.

§ 11. (*a.*) In the above form of the beginning of an absolute deed of land, blanks are given to be filled by a recital of the consideration paid and of its receipt.

If the consideration be not paid the title does not pass. The payment of the consideration is made, in this State, an essential requisite. (See *supra*, § 8 s, and *infra* f, k, n.)

(*b.*) The consideration of a sealed covenant for the conveyance of land could only be denied by a sworn plea.—*Vineyard v. Smith*, 34 Texas, 454.

(*c.*) Conveyances of property in consideration of natural love and affection cannot be sustained against the rights and interests of antecedent creditors. (Raymond v. Cook, 31 Texas, 375.)—*Moreland* v. *Atchison*, 34 Texas, 351.

(*d.*) Where a note was given in part for land and in part for other considerations, the vendor's lien may be enforced for so much of it as was for land, provided the party claiming the lien can show precisely how much of the consideration was for land.—*Swain* v. *Cato*, 34 Texas, 365.

(*e.*) A purchaser at a sheriff's sale, who is the judgment creditor, is not a *bona fide* purchaser for value.—*Orme* v. *Roberts*, 33 Texas, 768; *Blankenship* v. *Douglas*, 26 Texas, 225; *Ayres* v. *Duprez*, 27 Texas, 524.

(*f.*) It is immaterial that the notes given for the purchase money have become barred by the statute of limitations; without payment of the purchase money the vendees cannot obtain absolute title to the property as against the vendor.—*Baker* v. *Ramsey*, 27 Texas, 52.

See also, Lander v. Rounsaville, 12 Texas, 195.

(*g.*) Where a title bond for land purported to be made in consideration of "one dollar," and the further consideration of "kindness to me as a stranger," *held* doubtful whether the instrument expressed on its face a valuable consideration.—*Davis, etc.*, v. *Forrest*, 26 Texas, 98.

(*h.*) The law requiring a failure of consideration where pleaded to an instrument under seal, to be sworn to, stands unchanged.—*Wimbish* v. *Holt*, 26 Texas, 673.

As to how a deed may be avoided for undue influence, see *Millican* v. *Millican*, 24 Texas, 426.

(*i.*) Where the consideration of the cancellation of a deed is the execution of another, and the latter proves from any cause to be void, equity will regard the first deed as never having been cancelled.—*Galbraith* v. *Templeton*, 20 Texas, 45.

(*j.*) As to the effect of a seal, see *Short* v. *Price*, 17 Texas, 397.

(*k.*) The payment of the purchase money is the essential constituent of the title to real estate.—*Robertson* v. *Paul*, 16 Texas, 472.

(*l.*) A plea which impeaches the consideration, either in whole or in part, of a note in writing under seal, is required by the statute (H. D., Art. 710, or P. D., Art. 228) to be supported by affidavit.—*Williams* v. *Bailes*, 9 Texas, 71; and *Clopton* v. *Pridgen*, 8 Texas, 308.

This is *a fortiori* the case as to a *deed* duly sealed.—ED.

(*m.*) That a mere voluntary conveyance, or donation, of real estate will not be enforced, either at law or in equity, is too well settled now to be questioned.—*Carlin* v. *Hendricks*, 35 Texas, 225.

(*n*.) Where the grantee fails to perform, though a deed be made, the motive and inducement held to have failed.—*Gibson* v. *Fifer*, 21 Texas, 260.

So in case of undue influence or mental weakness.—*Id.* See also Muckelroy v. Bethany, 24 Texas, 426.

(*o*.) Where the vendee of land under an executory contract refuses to go on, he forfeits so much of the purchase money as he has already paid, and the vendor may recover the land.—*Estes* v. *Browning*, 11 Texas, 237.

THE RECITALS.

§ 12. (*a*.) The recitals of a deed are generally incorporated in *the premises;* by which term is meant all that part of a deed which precedes the *habendum*. In the recitals of the premises an abstract of the chain of title, the field notes, or any other definite description of the land conveyed—indeed, any and all facts touching the same upon which the parties may agree. For example, after the words "all that," may be inserted—"certain tract of land situate in the county of ————, and State of Texas, patented to ———— by patent No. —, recorded on pages —— of volume —— of the record books of the General Land Office of the State of Texas, and also on pages —— of book —— of the record books of said county of ———; which tract was conveyed by a deed containing covenants of good title and of the right to convey free from all incumbrances and of general warranty, by the patentee thereof unto ————, the grantor hereof, and which deed is of record on pages —— of book —— of the record books of said county; a more particular description of which tract is as follows:" (Here insert the field notes or such other description as may enable the land conveyed to be identified with certainty.)

[For names of trees in old titles, see Texas Digest, 585.—ED.]

(*b*.) A mistake in the calls in a patent correctable by other calls.—*Bernard* v. *Good*, 44 Texas, 638. [So with a mistake in the calls of a deed.—ED.]

(*c*.) Recitals bind both parties to, and parties claiming under, deeds.—*Fisk* v. *Flores*, 43 Texas, 340.

(*d*.) So with recitals in a land certificate.—*McPhail* v. *Burris*, 42 Texas, 142.

(*e*.) Any deed duly recorded is notice to all the world of whatever it contains, and no one can claim adversely to such deed as an innocent purchaser.—*Vaughan* v. *Greer*, 38 Texas, 530.

(*f*.) Recitals in the quit-claim deed of a remote vendor not evidence of a prior unregistered conveyance.—*Graham* v. *Hawkins*, 38 Texas, 628.

(*g*.) Restrictive words in the latter part of a deed control the grant. See this case for illustration.—*Cromwell* v. *Holliday*, 34 Texas, 463. [This case is cited to show that the recitals may be controlled by restrictive words inserted later.—ED.]

(*h*.) A recital in a title bond of the payment of a certain consideration is not conclusive, but, at most, only *prima facie* evidence either of the true amount of the consideration, or of the fact that it was paid. Notwithstanding the recitals in a deed or a title bond, the consideration may be inquired into, and the facts with reference to it proved by parol evidence. *Eborn* v. *Cannon*, 32 Texas, 231. [See P. D., 143, Art. 223.—ED.]

(*i*.) Parties and privies are bound by the recitals in their deeds and patents.—*Kimbro* v. *Hamilton*, 28 Texas, 560.

(*j*.) Recitals in a sheriff's deed are only matter of inducement and cannot affect a stranger whose land the sheriff may have improperly attempted to sell.—*Leland* v. *Wilson*, 34 Texas, 79.

(*k*.) It is an elementary rule, which needs no illustration, that the recitals in a contract for the sale of land are conclusive against the vendor and his privies of the payment of the purchase money admitted thereby. This rule applies to such contracts whether under seal or not.—*Martin* v. *Weyman*, 26 Texas, 469.

(*l*.) Parol evidence may be adduced to explain or correct misdescription in a deed.—*Hughes* v. *Scanlan*, 25 Texas, 162.

(*m*.) If the recitals in the chain of title under which the purchaser holds show that the purchase money has not been paid to the prior vendor, he will be held to have had notice of such prior vendor's lien.—*McAlpine* v. *Burnett*, 23 Texas, 649.

(*n*.) The recital of the payment of the purchase money in the deed of the subsequent vendee is not evidence against the prior purchaser.—*Watkins* v. *Edwards*, 23 Texas, 445.

(*o*.) It is well settled that where land is sold by metes and bounds, the recital of the number of acres is mere matter of description, and is not supposed to influence the contract of the parties; inasmuch as men may easily err in their estimate of the number of acres within certain lines, but cannot err as to where marks, or monuments, or natural objects are on the earth's surface.—*Dalton* v. *Rust*, 22 Texas, 133.

(*p*.) An act of sale of land, by power of attorney in Louisiana, is not evidence of the execution of the power, although the exhibition of the power be recited in the record, more especially when the power purported to have been executed in a foreign country.—*Watrous* v. *McGrew*, 16 Texas, 506.

(*q*.) It is not necessary that an administrator's deed should recite the proceedings or decree at length; nor is such a recital evidence of the facts recited, except between the parties and their privies. The judgment or decree authorizing the conveyance must be produced.—*Jones* v. *Taylor*, 7 Texas, 249.

(*r.*) "A recital of one deed in another binds the parties and those who claim under them by matters subsequent."—*Hardy* v. *DeLeon*, 5 Texas, 212.

(*s.*) Where the description given in a deed of land intended to be conveyed includes several particulars, all of which are necessary to the identification of the land conveyed, no land passes by the deed except such as is consistent with every particular of the description.—*Cromwell* v. *Holliday*, 34 Texas, 463.

(*t.*) Where a grant called for a map as part of the description, the map is admissible in evidence to sustain the grant.—*Welder* v. *Carroll*, 29 Texas, 318.

(*u.*) Patent not void on account of repugnant call if the identity of the land can be ascertained from the language used.—*Id.* [So, from analogy, with a deed.—ED.]

(*v.*) A deed for a certain number of acres of land, to be taken out of a large tract, which describes the land sold as commencing at the beginning corner of the original tract, and to be taken in a square if it will admit of it, leaves it uncertain, from its terms, in what form the land is to be taken, and is void for uncertainty in the description, unless it be aided by matter extrinsic to itself.—*Wofford* v. *McKenna*, 23 Texas, 36.

(*w.*) A grant by the owner of a certain number of acres in a particular tract will authorize the grantee to locate it in any part of the tract, because the conveyance must be held to pass some interest, if such effect can be given it consistently with the rules of law; and if uncertain or ambiguous, it must be construed most strongly against the grantor.—*Id.*

(*x.*) In a contract between individuals, if a latent ambiguity exist in the description of the land, parol evidence may be resorted to to explain it and give effect to the intention of the parties.—*Id.*

(*y.*) But these principles are not applicable to conveyances made by the assessor, and parol evidence is not admissible to explain a latent ambiguity in such a conveyance, or to locate the land. If the description of the officer be so uncertain and incomplete as to require the aid of extrinsic evidence, his deed is void.—*Id.*

(*z.*) Where conflicting and contradictory calls are found in a deed, the most material and certain call must prevail; but where there is discrepancy, there is no occasion for construction.—*Bass* v. *Mitchell*, 22 Texas, 285.

(*aa.*) An error in matter of description in a deed, causing a latent ambiguity, may be corrected by parol proof.—*Early* v. *Sterrett*, 18 Texas, 113.

(*bb.*) The calls of a grant can be established by the aid of extrinsic evidence.—*Williamson* v *Simpson*, 16 Texas, 433.

(*cc.*) Where the description in a conveyance is sufficient to render the land capable of being ascertained and identified, it is sufficient.—*Berry* v. *Wright*, 14 Texas, 270.

(*dd.*) The falsity of a part of the description does not vitiate the deed, when, from the whole, the land conveyed may be certainly ascertained.—*Id.*

(*ee.*) A call for a corner between two proprietors as a beginning corner is good, although such corner may not have been established, provided the titles of the two proprietors furnish the data for its establishment.—*Id.*

(*ff.*) Where the description in a deed called to commence at David Strickland's *southwest* corner and run west, etc., and it was proved that the land to the last three calls began at David Strickland's *southeast* corner and ran west with David Strickland's line, it was held that the land was sufficiently identified.—*Smith* v. *Chatham*, 14 Texas, 322.

(*gg.*) Where the body of the land is sufficiently described to identify it beyond doubt, and to control with sufficient certainty erroneous particular descriptions, the latter may be rejected, to give effect to the former and uphold the deed.—*Id.*

(*hh.*) The most material and certain calls will control those which are less material and certain. A call for a natural object, as a river, a known stream, a spring, or even a marked tree, will control both course and distance; although there are many cases where the course and distance will control natural marks and boundaries, as where it is apparent on the face of the grant that these were inserted by mistake, or were laid down by conjecture; and so of a variety of cases which may be supposed.—*Hubert* v. *Bartlett*, 9 Texas, 97.

(*ii.*) Where the calls of a deed or other instrument are for natural or well known artificial objects, both course and distance, when inconsistent with such calls, must be disregarded.—*Urquhart* v. *Burleson*, 6 Texas, 502.

(*jj.*) A conveyance of land is valid if it describes the land with sufficient certainty to enable the vendee to identify it by the aid of extrinsic evidence.—*Conley* v. *Stanfield*, 10 Texas, 546.

(*kk.*) Where the description of the land in a deed is so indefinite that the land cannot be identified with certainty, the deed is void; but where the objection was to a sheriff's deed, in an action by the debtor to recover the land, it was *held* to be a sufficient answer to the objection of vagueness, that the description in the deed corresponded substantially with the description of the same land contained in plaintiff's petition.—*Howard* v. *North*, 5 Texas, 291.

(*ll.*) In the form given in the Act, the premises (i. e. the part of the deed that precedes the *habendum*) conclude with the following words:

"Together with, all and singular, the rights, members, hereditaments and appurtenances to the same belonging, or in any wise incident or appertaining."

THE HABENDUM, ETC.

§ 13. Next in order after the premises, in the statutory form, comes the *habendum*, which is usually joined with the *tenendum*.

"To have and to hold all and singular the premises above mentioned unto the said —— – —, his heirs and assigns forever."

Though they are not essential, because section 3 of the Act concerning conveyances (§ 3, c) dispenses with livery of seizin, and section 16 (§ 3, o) causes a deed to pass the fee simple title if the grantor has it (§ 3, n)—"if a less estate be not limited by express words," etc., it is preferable that they should not be omitted, as they tend to show that the instrument in which they are incorporated is meant to be a deed, and besides they would be approved by purchasers from common law States or countries.

OF THE COVENANTS.

§ 14. (*a*.) Next following the *habendum* and *tenendum*, as a matter of convenience preceding the warranty rather than succeeding it, "any clause or clauses in conveyances hereafter to be made, that may be deemed proper and advisable by the purchaser and seller," which do not contravene the laws of the land, may be inserted. Forms of certain of these clauses or covenants--for the words "clause of warranty" in the beginning of the sentence (§ 3, p) clearly indicate that by "clause or clauses" is meant covenant or covenants--are here given.

(*b*.) As at common law not only any or all of the six common covenants, as the parties might agree, might be incorporated in a deed, but any other lawful covenants they might determine upon might also be incorporated. The language of the Act above cited (§ 3, p), though awkward in so far as it stylos covenants "clauses", makes all such covenants, whether common or special, permissible.

(*c*.) The common covenants referred to are as follows: 1. The covenant for seizin. 2. The covenant for good right to convey. 3. The covenant against incumbrances. 4. The covenant for quiet enjoyment. 5. The covenant for further assurance. And 6. The covenant of warranty (general or special).

As these covenants have a judicially settled scope and construction, an approved form of each in modern phraseology will be now given, together with a brief notice thereof.

The covenant for seizin.

(d.) A convenient form of this covenant is as follows:

—"and the said (grantor) does hereby for himself, his heirs, executors and administrators, covenant with the said (grantee), his heirs

and assigns, that he the said (graptor) is now seized, to him and his heirs, of a good, sole, absolute and indefeasible estate of inheritance in fee simple of and in the tract of land hereby bargained and sold."

This covenant is not now often used, being substituted by the covenant for good right to convey, or some special covenant, such as a covenant that the grantor has good title.

The measure of damages in case it is broken is, in general, the consideration money, with legal interest thereon. (Rawle on Covenants for Title, 99, 100.)

As, if broken at all it is broken as soon as it is made, it has been held not to run with the land. (*Id.*, Ch. viii, 340.)

The covenant for a good right to convey.

(*e.*) A form of this covenant is as follows:

--"the said (grantor) now has in himself good right, full power and absolute authority, to grant and release the said tract of land, with the appurtenances, unto the said (grantee), his heirs and assigns."

The measure of damages for the breach of this covenant is the consideration money, with legal interest from the date of its payment. (Rawle on Covenants for Title, 130.)

As, if broken at all it is broken as soon as made, this covenant does not run with the land. (*Id.*, Ch. viii, 340.)

The covenant against incumbrances.

(*f.*) A form of this covenant is as follows:

—"and the said (grantor) hereby covenants that the tract of land above described, and its appurtenances, are free and clear of all incumbrances of every sort and description done or suffered by him."

The measure of damages for the breach of this covenant is, in case the estate is entirely defeated by an incumbrance, the consideration money, with interest from the date of its payment; and in case of a less injury by means of an incumbrance, the amount paid to extinguish the incumbrance. (Rawle on Covenants for Title, 164 and 148, n.)

The mere existence of an incumbrance, without more, will entitle the plaintiff to but nominal damages. (*Id.*, 148.)

This covenant does not run with the land. (*Id.*, Ch. viii, 340.)

The covenant for quiet enjoyment.

(*g*.) A form of this covenant is as follows:

—"and that it shall be lawful for the said (grantee), his heirs and assigns, from time to time and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the said tract of land, with its appurtenances, to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatever, of, from or by him the said (grantor) or his heirs, or any other person or persons whomsoever."

The measure of damages for breach of this covenant is, in case of an entire deprivation of the enjoyment of the land, etc., the consideration money with legal interest from the date of its payment; and in case of a deprivation of the enjoyment of a part, the amount paid to relieve the same. (Rawle on Covenants for Title, 212.)

This covenant runs with the land. (*Id.*, 199.)

The covenant for further assurance.

(*h*.) A form of this covenant is as follows:

—" and also that he, the said (grantor), and his heirs, and all persons rightfully claiming any estate or interest in the said premises, etc., or any part thereof, under or in trust for him, will from time to time and at all times hereafter, at the request and costs of the said (grantee), his appointees, heirs or assigns, make, do, acknowledge, enter into, execute and perfect, or cause or procure to be made, done, acknowledged, entered into, executed and perfected, all such further acts, deeds, conveyances and assurances whatsoever, for the further, better, more perfectly or satisfactorily granting, releasing and confirming, or otherwise assuring the said hereditaments and premises, and every or any of the same, with their appurtenances, to the use and in the manner aforesaid, according to the true intent and meaning of these presents, as by said (grantee), his heirs, appointees or assigns, or his or their counsel in the law, shall be tendered to be done and executed." (Rawle on Covenants for Title, 203, 204.)

This covenant is generally sued upon in equity where the common law rules as to measure of damages do not apply (*Id.*, 215), but when

sued upon at law, the rules as to damages in case of breach of the covenant of seizin or against incumbrances are applicable. (*Id.*, 216.)

Until a refusal to execute, it runs with the land. (*Id.*, 215.)

The covenant of warranty.

(*i.*) The form given in the Act concerning conveyances, of February 5, 1840, 157, Sec. 15 (§ 3, p), is that of a covenant of *general* warranty, and is as follows:

—"and I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said (grantee), his heirs and assigns, against any person whomsoever lawfully claiming or to claim the same, or any part thereof."

This can be converted into a form of special warranty by adding the words: "by, through, or under me."

The measure of damages for breach of a covenant of warranty (whether general or special), is the consideration money with legal interest thereon, though where the use (or rent) of the land is equivalent to the use (or interest) of the money, and the third party evicting the vendee or his heirs by means of a superior title fails to recover damages, it is not perceived that interest would be recoverable. This covenant runs with the land. (Rawle on Covenants for Title, Ch. viii, 340.)

(*j.*) Where a deed assumes to convey the land and not merely the title (such as it is) that the vendor has in it, and there is a general warranty, it will carry any after-purchased right or title that may be acquired by the vendor.—*Harrison* v. *Boring*, 44 Texas, 255.

Query as to this? Does not this decision extend the covenant of warranty so as to make it embrace what can only be within the scope of a covenant of further assurance—a covenant *not* made by the parties?—ED.

(*k.*) To enable a vendee holding land under a conveyance with a general warranty, executed and delivered, to resist the payment of the purchase money, he must establish beyond doubt that the the title had failed, in whole or in part, and that there was danger of eviction.—*Johnson* v. *Leroy*, 27 Texas, 21.

Query as to this? See, *infra*, the citation of Tarpley v. Poage's Admr., 2 Texas, 139.—ED.

(*l.*) A covenant of general warranty is not limited or restrained in its operation by a succeeding covenant in the same deed to defend the title against all persons claiming through the patent or deed under which the vendor held the land.—*Rowe* v. *Heath*, 23 Texas, 614.

(*m.*) Actual eviction is not necessary to enable the warrantee to sue.—*Peek* v. *Hensley*, 20 Texas, 672.

(*n.*) In order to entitle to recover at all on the ground of eviction, he must have been evicted legally or by paramount title, which must be al leged.—*Flanagan* v. *Ward*, 12 Texas, 209.

(*o*) An administrator cannot bind the estate by his warranty (Lynch v. Baxter, 4 Texas, 431): but the estate cannot be permitted to derive any unj ist or unconscientious advantage from his unauthorized fraudulent conduct.—*Able* v. *Chandler*, 12 Texas, 88.

(*p.*) Where the warranties in a deed are equivalent to a covenant of seizin in the vendor, the vendee may, before eviction, prove the failure of the vendor's title as a valid defense to an action for the recovery of the purchase money. In such case the vendee cannot be compelled to wait until actual eviction, and then resort to an action on the covenants of the deed for redress, more especially when it appears that the vendor is insolvent.—*Tarpley* v. *Poage's Admr.*, 2 Texas, 139.

[Can one covenant be equivalent to another *not* made?—ED.]

(*q.*) The provision at the close of section 16 of the Act concerning conveyances (§ 3, p) that "no person shall be obliged to insert the clause of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter to be made that may be deemed proper and advisable by the purchaser and seller; and that other forms, not contravening the laws of the land, shall not be invalidated," makes any lawful covenant or covenants, whether general or special, executed or executory, admissible as "clauses," if agreed upon by the parties. This provision permits the insertion of an endless variety of covenants, too numerous to be specified, in addition to, or in place of, any or all of the common covenants enumerated. By way of illustration, a few of such covenants are here mentioned:

A covenant that the grantor has the fee simple title and actual possession.

That he has such title of record.

That the land is free and clear from all taxes.

That in case of the breach of any of the covenants in the deed, the measure of damages shall be ——— dollars, as liquidated damages, and not as a penalty.

That the vendee shall not have the right of action on any covenant in the deed unless he maintains continuous actual occupation of the land under said deed duly recorded, cultivating and paying all taxes thereon for five years. (See P. D., 767, Art. 4623.)

That the vendor only warrants such title as he has, and does not warrant further.

(*r*.) If a vendor's lien is reserved, whether in the deed or by means of a mortgage or deed of trust, which will be construed together with the deed as one contract, the deed, though absolute on its face, will not be regarded as passing the title.

This must not be lost sight of when a deed is to be prepared.

OF THE DATE AND SIGNATURE.

§ 15. (*a*.) Next come the words:

"Witness my hand and seal, this ——— day of ———, in the year ———. ———— ————. [L. S]"

(*b*.) A deed should always be dated. For convenience, as it is often prepared in advance, blanks are left at the end to be filled with the date—as in the statutory form. They should be filled with the date when it is actually executed, written in words rather than in figures (though figures are sufficient), because, when the date is so inserted, it is less subject to error, as well as less liable to alteration.

(*c*.) It is here to be observed of the three Acts (which went contemporaneously in force on March 16, 1840), to-wit: the Statute of Frauds, the Act concerning conveyances and the Act to adopt the common law, etc., which regulates the construction of the two former, that the first alone in express words prescribes that the conveyance, or "contract for the sale of land," shall not be actionable "if the same be not in writing and signed by the party to be charged therewith, or some person by him thereunto lawfully authorized"—that is to say, by some one verbally authorized and who signs in his presence, or else by his attorney in fact; while the second, the Act concerning conveyances, also indicates, by the words "witness my *hand*," and reiterates the indication by the use of the word "*signed*" in the statutory form, that it must be *signed*.

(*d*.) Although by a signature, strictly speaking, is meant the writing by a person his or her entire name at the foot of an instrument—not the surname alone, or the surname preceded by an initial or initials, or the contraction of his or her Christian name—it is the usage in Texas, as in most of the States of the Union, for a party executing a deed to sign the same as he or she ordinarily does when signing letters, checks, or contracts of any sort, and such a signature is deemed in law to be sufficient. Notwithstanding that the middle name or initial is, at common law, no name, it is preferable, espe-

cially where the full name is written in the body of a deed, that the full name should be signed.

OF THE SEAL.

§ 16. (*a.*) According to the statutory form, next in order comes the sealing. The words "witness my hand and *seal*," etc., and "signed, *sealed*," etc., indicate and reiterate this. In the first section of the Act it is expressly stated that no estate, etc., "shall be conveyed from one to another unless the conveyance be declared by writing, *sealed* and delivered; and any instrument to which the person making the same shall affix a scroll by way of *seal* shall be adjudged and holden of the same force and obligation as if it were actually *sealed*; *provided*, the person making the same shall in the body of the instrument recognize such scroll as having been affixed by way of *seal*."

(b.) Section 1 of "An Act prescribing the mode in which married persons may dispose of their separate property," of February 3, 1841, 144 (repealed by the act next cited below), contains the following expressions: "When a husband and wife have *sealed* and delivered a writing purporting to be a conveyance of land," "she did freely and willingly *seal* and deliver said writing," "she had willingly signed, *sealed* and delivered the same."

(*c.*) Sections 1 and 2 of "An Act defining the mode of conveying property in which the wife has an interest," of April 30, 1846, 156 (section 4 of which contains a general repealing provision which repeals the Act next above cited), contain the following expressions: "When a husband and his wife have signed and *sealed* any deed," etc., "she did willingly sign and *seal* the said writing," "she had willingly signed, *sealed* and delivered the same," "when a husband and wife have signed and *sealed* any deed," and "when any such deed shall have been signed and *sealed* out of the United States."

(*d.*) "In any suit founded on any instrument or note in writing, under seal of the party charged therewith, the defendant may, by special plea, impeach or inquire into the consideration thereof, in the same manner as if such writing had not been sealed; but no pleas impeaching the consideration of any instrument or note in writing, under seal, shall be admitted unless supported by the affidavit of the defendant, or some person for him, stating that the facts set forth in said plea are true, as far as stated of his own knowledge, and that he believes them to be true so far as stated from the information of others." (An Act to regulate proceedings

in the district courts, of May 13, 1846, 363, Sec. 52; P. D., 146–148, Arts. 228 and 227.)

See also section 90 of the same Act, P. D., 605, Art. 3716; and P. D., 354, Arts. 1442–1444.

(*e*.) From the foregoing statutory enactments it is clear that after they took effect it was as indispensable that conveyances of land should be sealed (though a scroll might be used), as that they should be delivered. Have they at any time since been amended or repealed? If so, have they been expressly, or impliedly, amended or repealed? Let us consider the constitutional provisions, and the Acts, with reference to which the reader must answer these questions for himself:

(*f*.) Sec. 24. Every law enacted by the Legislature shall embrace but one object, and that shall be expressed in its title.

Sec. 25. No law shall be revived or amended by reference to its title; but in such cases the act revived or section amended shall be re-enacted and published at length.

[Constitution of Texas of 1845, Art. 7, Secs. 24 and 25. These are copied *verbatim* in the Constitution of Texas of 1866. Art. 7, Secs. 24 and 25; in the Constitution of Texas of 1869, Art. 12, Secs. 17 and 18; and it may be added, in a modified form in the Constitution of Texas of 1876, Art. 3, Secs. 35 and 36.]

(*g*.) CHAPTER 78.—AN ACT TO DISPENSE WITH THE USE OF SCROLLS AND SEALS IN CERTAIN CASES.

Section 1. *Be it enacted by the Legislature of the State of Texas*, That no scroll or private seal shall be necessary to the validity of any contract, bond or conveyance, whether respecting real or personal property, except such as are made by corporations; nor shall the addition or omission of a scroll or seal in any way affect the force and effect of the same; and every contract in writing hereafter made shall be held to impart* a consideration as fully and in the same manner as sealed instruments have heretofore done.

* Does any instrument, whether sealed or unsealed, impart a consideration?—ED.

Sec. 2. That this act shall take effect from and after its passage.

Approved February 2, 1858. (P. D., 852, Art. 5087.)

(*h*.) CHAPTER XL.—AN ACT TO DISPENSE WITH THE USE OF SCROLLS AND SEALS IN CERTAIN CASES, APPROVED FEBRUARY 2, 1858.*

Section 1. *Be it enacted by the Legislature of the State of Texas*, That the above recited act shall be so amended as hereafter to read as follows: "Section 1. No scroll or private seal shall be necessary to the validity of any contract, bond, or conveyance, whether respecting real or personal property, or any other instrument in writing, whether official, judicial, or private, except such as are made by corporations; nor shall the addition or omission of a scroll or seal in any way affect the force and effect of the same; and every contract in writing hereafter to be made shall be held to impart a consideration as fully, and in the same manner, as sealed instruments have heretofore done.

Sec. 2. That this act take effect from and after its passage.

Approved April 28, 1873.

(*i*.) On a close examination, it will be seen that the Act of February 2, 1858 (§ 16, g), does not, in its title or body, profess to amend, by reference to the title thereof or otherwise, or to repeal any of the Acts above cited (§ 16, a, c and d), or, indeed, any other law or laws whatever. It contains no amendatory words and no repealing clause, general or special. Hence, in these particulars, it does not conflict with sections 24 and 25 of article 7 of the Constitution of 1845.

It is to be further observed, that while in its title it only *professes* to embrace a specified object—to dispense with the use of scrolls and seals in *certain* [*query*, what?] cases, not *all* cases—in its body it

* The words "An Act to amend" are omitted in the title in the published law, and the omission exists in the enrolled Act.—ED.

does nothing of the sort. The words "nor shall the addition or omission of a scroll or seal in any way affect the force and effect of the same," etc., do not, under any known rules of legal construction, amount to dispensing with scrolls and seals. They signify that scrolls and seals may continue to be used, and shall have the same effect as before; while unsealed written instruments are elevated to the dignity of sealed ones (specialties)—an object *not* expressed in the title.

Were the title, "An Act not to dispense with, but to continue the use of scrolls and seals, especially by corporations, and to elevate what purport to be contracts, bonds and conveyances touching real and personal property, which may not be sealed, to the dignity of sealed instruments," it would express the object set forth in its body—but not otherwise.

(*j*.) The Act of April 28, 1873, is not only obnoxious to all of the objections above suggested, but is fatally defective in another respect, the words "An Act to amend" being omitted in its title.

(*k*.) As these Acts, if constitutional, clearly provide that scrolls and seals may continue to be used in all cases where the Act concerning conveyances (§ 3, a and p) imperatively requires them to be used, it is the safer practice to append a seal to every deed of land and to every registrable instrument. A sealed conveyance cannot be impeached save by a sworn plea, and where a sale is desired to be made to a person coming from a common law State or country, requires no explanation.

A conveyancer who does his work in the best manner will not prepare a deed so that it will be objected to by a prudent purchaser—will take no risks that may be easily avoided. He will see to it that deeds prepared by him are sealed.

The following are decisions of the Supreme Court of this State on the subject of seals.

(*l*.) Corporations aggregate do not appear to have been permitted, otherwise than by their common seals, to issue negotiable bonds.—*San Antonio* v. *Gould*, 34 Texas, 49.

(*m*.) The Act of February 2, 1858, concerning seals, repeals the common law as to contracts concerning property, and in its spirit extends to all money obligations, and was intended to dispense with sealed instruments. *Courand* v. *Vollmer*, 31 Texas, 397.

But query as to this?—ED. See *supra*, j, k.

(*n*.) A note in writing in the ordinary form concluding "witness my

hand and seal," with the word "seal" written inside of an ink scroll, is "a note in writing under seal," within the terms of the statute.—*Clopton* v. *Pridgen*, 8 Texas, 308.

(*o*.) In a conveyance of land the word "seal" written or affixed in a scroll or flourish after the grantor's name, indicates clearly his purpose, and *prima facie* should be held for his seal.—*English* v. *Helms*, 4 Texas, 228.

(*p*.) If it can be fairly inferred from the body of the instrument that the party affixing the scroll intended it as a seal, it is sufficient to bring it in the proviso.—*Fleming* v. *Powell*, 2 Texas, 225.

(*q*.) Seals (i. e. private seals) not essential to the validity of "obligations" prior to the introduction of the common law.—*Sloo* v. *Powell*, Dallam, 467; *Cayce* v. *Curtis*, Dallam, 403.

(*r*.) The bond in the case under review was, in effect, an agreement for the sale of lands. The law requires such contracts to be in writing, but a seal is not necessary to their validity.—HEMPHILL, C. J., in *Eckhart* v. *Reidel*, 16 Texas, 69.

(*s*.) A contract for the sale of land is not required by the statute to be under seal.—*Holman* v. *Criswell*, 13 Texas, 38.

(*t*.) Nor one for the sale of land certificates.—*Randon* v. *Barton*, 4 Texas, 289.

(*u*.) There can be no question that the sheriff's deed, though incomplete (wanting a seal), and the return upon the execution, evidenced a sale of the land under the execution and a purchase by the plaintiff.—*Miller* v. *Alexander*, 13 Texas, 497.

(*v*.) A note bearing a scroll with the word "seal" written in it opposite the name of one of the payees, and a scroll without anything written in it opposite that of the other, is a sealed instrument.—*Muckelroy* v. *Bethany*, 23 Texas, 163.

(*w*) Attaching a seal to an instrument usually called a note gives an increased effect to its apparent validity, so far that the payee cannot impeach the consideration otherwise than by a sworn plea (O. & W. Dig., Art. 430), and the difference between a note under seal and one not under seal is therefore material to the defendant.—*Id.*

(*x*.) A plea which impeaches the consideration, either in whole or in part, of a note in writing, under seal, is required by the statute (H. D., 710) to be supported by affidavit.—*Clopton* v. *Pridgen*, 8 Texas, 308.

OF THE DELIVERY.

§ 17. (*a*.) Next in order after the sealing a conveyance of land comes the delivery. The delivery, which is "the transferring of a deed from the grantor to the grantee in such a manner as to deprive him of the right to recall it, is indispensably necessary to the valid-

ity of a deed (1 Bouvier's Law Dic., 396), and is recognized to be such by the form of attestation clause given in our statute. (§ 3, p.)

(*b*.) "Signed, sealed and *delivered* in presence of
——————— ———————
——————— ———————
——————— ——————— } ——————— ——————— [L. S.]"

(*c*.) The delivery of the deed of trust to the original trustee is not essential to its validity, nor could the renunciation of the trust invalidate the deed as a security.—*Walker* v. *Johnson*, 37 Texas, 127.

The *deed of trust* appears to be the exception.—ED.

(*d*.) A deed takes effect from the date of its delivery, and the delivery may be either actual or constructive. If a deed be not actually delivered to the grantee or his authorized agent, it is essential to its validity to prove notice to the grantee of its execution, and such additional circumstances as will afford a reasonable presumption of his acceptance of it. The presumption that a grantee will accept a deed because it is beneficial to him will never be carried so far as to consider him as having actually accepted it. (P. D., Art. 1000, note 422)—*Tuttle* v. *Turner*, 28 Texas, 760.

(*e*.) The presumption of delivery arising from the possession of a deed may be rebutted by proof.—*Id*.

(*f*) The delivery of a deed may be established by circumstances as well as by direct proof.—*Powell* v. *Haley*, 28 Texas, 52.

(*g*.) Delivery is essential in order to pass title by deed of bargain and sale, or release; and an acceptance by the grantee, either expressed or implied, is necessary to a complete delivery.—*Dikes* v. *Miller*, 24 Texas, 417.

(*h*.) The above form of attestation clause is for cases of absolute delivery. At common law the delivery may be either absolute or conditional. (See 2 Bl. Com., 306; and 4 Kent's Com., 446.) Where a conditional delivery is intended to be made, an attestation clause should be framed so as to show it with certainty.

If the statutory attestation clause (which recites an absolute delivery) were made a part of a deed meant to be delivered to a third person, and not to the grantee himself, until certain conditions shall be performed, and then to the grantee, and the deed acknowledged or proven for record, the certificate and entries of the officer taking the acknowledment or proof, as well as the attestation clause itself, would be in conflict with the actual understanding between the parties, and in case of a loss of the deed, especially were the grantor in the meantime to die, might cause a deed to be held to have been ab-

solutely delivered, when, in fact, it was only an escrow, and, owing to the non-performance of conditions, never passed the title.

How can a notary certify an acknowledgment or proof to an instrument in blank?—"the names of the original grantee thereof shall be kept, and the counties where the land is situated." ("An Act to regulate the appointment, etc., of notaries public," of June 24, 1876, 30, sec. 8.)

(*i.*) The attestation clause should recite all that the witnesses might be called upon to prove, so that on reading it they can see at a glance what they attested and what they are bound to swear to if required, either in proving a deed for record or in proving its execution in a suit.

(*j.*) The following is a form of attestation clause for deeds to be absolutely delivered, which not only makes each witness a witness to the signature of the other or others, but specifies what section 8 of the registry Act of May 12, 1846, 237 (P. D., 838, Art. 5008), expressly and by implication requires the witness or witnesses to swear to in order to prove a deed for record:

"Signed, sealed and delivered in presence of the undersigned, each of whom is also witness to the signature of the other(s) and signs as a witness at the request of the grantor.

_____ _____

_____ _____

_____ _____

_____ _____ [L. S.]"

(*k.*) The peculiar advantages of this form are, that when the deed to which it is appended has to be executed at a distance, it is apt to be attested, as the act directs, by *two or more* credible subscribing witnesses; and besides, it shows affirmatively that each of the witnesses signed as such "at the *request* of the grantor, or person who executed the instrument," to which fact they, or "one or more" of them, must swear in order to prove it for record. The law provides that *executed* instruments—not partly executed ones, in which *one or more steps towards execution* have been taken—may be proven for record. ("An Act to provide for the registry of deeds and other instruments of writing," of May 12, 1846, 237-8, Sec. 8; P. D., 838, Art. 5008.)

OF THE SUBSCRIBING WITNESSES.

§ 18. (*a.*) Next in order to the delivery in the execution of a

conveyance comes the signature of the attestation clause by the subscribing witnesses. For purposes of identification it is preferable that they should sign their entire names. The words, "said form, in substance, shall to all intents and purposes be valid and effectual to convey from one person to another the fee simple of any land or real estate, if the same be executed in the presence of and subscribed by *two or more* credible witnesses,"* indicate that at least two credible subscribing witnesses are required. (An Act concerning conveyances, of February 5, 1840, 157, sec. 16; or § 3, p.)

(*b.*) The Statute of Frauds, which took effect on the same day with the Act concerning conveyances, prescribes that a deed on consideration not deemed valuable in law shall be taken as fraudulent "if not acknowledged or proved in such manner as conveyances of lands are by law directed to be acknowledged or proved; or if it be goods and chattels, or slaves only, then acknowledged or proved by *two or more* witnesses and recorded," etc. (An Act to prevent frauds, etc., of January 18, 1840, 29; or § *z*, b.)

It is to be noted that both of these Acts employ the words "two or *more*," not two or *less*, or no witnesses.

(*c.*) It is also to be borne in mind that the first law of the Republic of Texas in which provision is made for the acknowledgment or proof and registration of deeds, etc., provides that "*one* of the *witnesses, of the number required by law*, shall swear to the signature of the signer, or he himself shall acknowledge the same." This law required that they should "be proven by *at least two subscribing witnesses*, if living in the county." (An Act organizing the inferior courts, and defining the powers and jurisdiction of the same," of December 20, 1836, 155, 156, secs. 35 and 38; P. D., 832, Art. 4973, and P. D., 834, Art. 4982.)

The next law on the subject provides that "one of *the subscribing witnesses* shall swear to the signature of the signer, or he himself shall acknowledge the same." (An Act better to define the duties of Recorders," of January 19, 1839, 47, sec. 1; P. D., 832, Art. 4974.)

(*d.*) The next law (in point of date) on the subject provides for proof "by one or more of the subscribing witnesses," as well as for acknowledgment by the grantor or grantors stating that "if it be so acknowledged and certified there need be no subscribing wit-

* The words cited amount to a proviso, in fact, though not so termed—see *supra*, § 16, p—and hence they make the subscribing witnesses an essential requisite to the passing of the fee simple—not merely an equitable title—by deed.—ED.

nesses." (An Act of limitations, of February 5, 1841, 168-9, secs. 20 and 21; P. D., 833, Arts. 4977, 4978.)

This Act of *Limitations*, by the irrelevant sections cited, does not in terms undertake to amend or to repeal any pre-existing law touching proof for registration. The sections referred to declare the law only as to proof for registration, and not as to the essential requisites of conveyances. They cannot be construed to impliedly repeal the condition, "if the same be executed in the presence of and subscribed by two or more credible witnesses," which the Act concerning conveyances requires, to make a deed "valid and effectual to convey from one person to another the fee simple of any land or real estate."

If however they did (while in force), which is not conceded, were they not superseded by sections 7 and 8, and repealed by section 19 of a later Act, not of *limitations*, but of *registration*?

See "An Act to provide for the registry of deeds and other instruments of writing," of May 12, 1846, 237, secs. 7 and 8, and 241, sec. 19; P. D., 838, Arts. 5007, 5008, and 840, Art. 5019. See also "An Act to amend the ninth section of An Act to provide for the registry of deeds and other instruments of writing," of March 6, 1863, 26, sec. 1; P. D., 839, Art. 5009. And "An Act supplementary to An Act to provide for the registry of deeds and other instruments of writing," of February 9, 1860, 75, sec. 2; P. D., 841, Art. 5021.

(*e*.) Section 7 of the Act of May 12, 1846, provides for acknowledgment. Section 8 provides for proof "by one or more of the subscribing witnesses," requiring an oath that "he or they had signed the same as witnesses at the request of the grantor"; while section 19 in terms enacts that "all laws and parts of laws conflicting with the provisions of this Act be and the same are hereby repealed." Section 9 (both before and after having been amended) provides that when the subscribing *witnesses* are dead, or *their* place of residence is unknown, or *they* reside out of the State, an affidavit to such fact being attached to the deed, it may be proved for record "by the evidence of the handwriting of the grantor, or person who executed such instrument, and at least one (as amended) of the subscribing witnesses"; while section 10 contains the phrase "any subscribing witness."

Section 2 of the Supplementary Act employs the words, "by one or *more* of the subscribing *witnesses* thereto."

(*f*.) Particular attention is called to the above cited provisions of the statute law, because what is conceived to be a very erroneous

decision of our Supreme Court has been made as to subscribing witnesses, the abstract of which is as follows:

A deed without subscribing witnesses, but which has been acknowledged by the grantor before a proper officer, may be read in evidence on proof of its execution: which may be made by the grantor, if not interested in the suit; or by any other person who was present at the execution of it. A deed thus executed is valid and effectual to pass title.—*Meuley* v. *Zeigler*, 23 Texas, 88.

Can a repealed provision in a section of an Act of *limitations* relating solely to *registration* be held to materially amend an Act, not of limitations nor in regard to registration, but giving exclusively the substance and form of conveyances?

The repealing section (P. D., 840, Art. 5019) does not appear to have been called to the notice of the court.

Probably from neglect of counsel to make the points expressed in or implied by the statute itself, our Supreme Court seems to have fallen into another error touching subscribing witnesses. For example:

In declaring "the request of the grantor, or person who executed such instrument," to apply to the second, not the first, clause of section 8 of the Act of May 12, 1846, as was done in Dorn v. Best, 15 Texas, 65, has it not defeated the obvious intention of the Legislature, the second of the two dashes employed evidently having been by mistake inserted after instead of before the words "for the purposes and consideration therein stated?"

Can any one be a *subscribing* witness save at "the request of the grantor or person who executed such instrument"? Does section 8 (*infra*, § 22, b), or does any law, contemplate registration on proof, of any other than an "executed" instrument—and on proof of its *execution*—not merely of one or more steps towards, but short of, its execution?

(*g.*) Subscribing witnesses are required by the Act concerning conveyances, not merely that one or more of them may prove the deed for record—for it can be recorded on acknowledgment alone—but as an essential requisite of the instrument. They are intended to prove the actual payment of the consideration when it is in fact paid in their presence. They are intended to prove the *execution* (including the delivery) of the deed, if it should ever be called in question.

(*h.*) As the consideration of a deed may be impeached (P. D.,

148, Art. 228); as it may be charged with being forged (P. D., 605, Art. 3716); and as its execution may be denied by a plea of *non est factum* (P. D., 354, Arts. 1442, 1443)—in all cases a preliminary affidavit being required to lay the foundation for such attacks—it is the safer practice that it should be signed, at the request of the grantor, by two or more credible witnesses, as the Act provides.

(*i.*) The fact that a deed has two or more competent, credible, well known and respectable subscribing witnesses will often prevent it from being made the subject of a suit, or if it should be involved in a suit, may prevent the preliminary affidavit to attack it from being made.

Hence it is that, in general, a cautious conveyancer, who wishes no question made as to his work, will see to it that deeds prepared under his supervision are in all cases signed by two or *more* (not two or *less*) credible witnesses—competent (i. e. not one of a married couple witnessing for the other, as one of the witnesses, not infants of tender age, lunatics or convicted felons) as well as credible, and well known prominent citizens, so that they can be identified and their effective evidence had in case it should ever be needed.

OF THE OFFICERS WHO MAY TAKE AND CERTIFY ACKNOWLEDGMENTS, OR PROOFS FOR RECORD.

§ 19. (*a.*) When a conveyance of land or other registrable written instrument is signed, sealed and delivered and attested by subscribing witnesses at the request of the grantor, it has next to be acknowledged, or else proved, before a proper officer, in order that it may be certified by him under seal, and thereupon deposited for record and recorded.

(*b.*) If it be the agreement that the grantor is to acknowledge, or to have his deed proved, certified, deposited for record and recorded, it is incumbent upon him to do so. In the absence of such an agreement, the grantee, for his own protection, must have it acknowledged or proved for record.

(*c.*) Whoever may need to have an instrument acknowledged, or proven and certified, must, in the absence of any agreement as to by whom the acknowledgment or proof must be taken, determine for himself which of the various officers authorized by law to act in such matters he will employ.

(*d.*) The statute in force declaring what officers within and without the State may take and certify acknowledgments and proofs is as follows:

* * * "Proof or acknowledgment of every instrument of writing for record shall be taken before some one of the following officers: First—When acknowledged or proven within the State, before some notary public,* district clerk,† or judge of the Supreme or District Court.

(*e*.) "Second—When acknowledged or proven without the State and within the United States, before some notary public, commissioner of deeds for this State, or before some judge or clerk of a court of record having a seal.

(*f*.) "Third—When acknowledged or proven without the United States, before some public minister, *charge d'affaires*, consul or consular agent of the United States, or notary public; and in all cases the certificate of such acknowledgment or proof shall be attested under the official seal of the officer taking the same."

("An Act to further amend the eleventh section of 'An Act to provide for the registration of deeds and other instruments of writing,' approved May 12, 1846," of May 6, 1871, 77, Sec. 1.)

(*g*.) "The county clerks of the several counties of this State, or their deputy or deputies,‡ shall have power, and it shall be their duty when applied to for that purpose, to take the separate acknowledgment of married women in all cases where such acknowledgment is required by law to be taken, to the execution of any deed or other instrument of writing or conveyance executed by them, and to take the acknowl-

* "And the justices of the peace shall be *ex officio* notaries public" (Const. of 1876, Art. 5, Sec. 19; Gen. Laws of 1876, 165, Sec. 28. See also Const. of 1869, Art, 5, Sec. 20; Gen. Laws of 1870, 104, Sec. 16.

† "All deputies regularly appointed by the clerks of the several District Courts of this State shall have power to take depositions, and to do and perform all other acts that may be lawfully done by said principal clerks." (An Act more particularly declaring the duties of deputy clerks, of February 9, 1856, 82, Sec. 1; P. D., Art. 496. As to county and deputy county clerks, see *g*.)

‡ Before the passage of this Act, it had been decided that the case of Rose v. Newman, 26 Texas, 131, overruled Miller v. Thatcher, 9 Texas. 426, and that it was now held that a deputy clerk had the right to take acknowledgments and register deeds. (Frizzell v. Johnson, 30 Texas, 31. See also Cook v. Knott, 23 Texas. 85.)

edgment of all other persons to deeds or other written instruments or conveyances, and to take proof by witnesses of all such deeds, written instruments or conveyances which are required or permitted by law to be acknowledged or proven for record; and it shall be their duty to record, in accordance with the registration laws now in force, all such deeds, mortgages, deeds of trust, or any other written instruments or judgments which may be permitted or required by law to be recorded."

(An Act to define and regulate the duties of county clerks throughout the State, of May 25, 1876, 11, Sec. 5.)

(*h*.) AN ACT TO AUTHORIZE THE APPOINTMENT OF COMMISSIONERS TO TAKE THE ACKNOWLEDGMENTS OF DEEDS, DEPOSITIONS, AND OTHER INSTRUMENTS OF WRITING EXECUTED OUT OF THIS STATE.

Section 1. *Be it enacted by the Legislature of the State of Texas*, That the Governor of the State is hereby authorized to name, appoint and commission, one or more persons in each or such of the other States of the United States, or the District of Columbia, as he may deem expedient, which commissioners shall continue in office during the pleasure of the Governor, and shall have authority to take the acknowledgments and proofs of the execution of any deed, mortgage, or other conveyance of any lands, tenements or hereditaments, and also to take the examination of married women as to their relinquishment of any right, title or interest, which they may have in any lands lying or being in this State.

Sec. 2. Any contract, letter of attorney or other writing under seal, to be used and recorded in this State, and such acknowledgment or proof, taken or made in the manner directed by the laws of this State, and certified by any one of said commissioners, before whom the same shall be taken or made, under his seal—which certificate shall be endorsed on or annexed to said deed or instrument afore-

said—shall have the same effect and be as good and valid in law for all purposes, as if the same had been made or taken as now required by law.

Sec. 3. Every commissioner appointed by virtue of this Act shall have full power and authority to administer an oath or affirmation to any person who shall be willing and desirous to make such oath or affirmation before him; and such affidavit or affirmation made before such commissioner shall be, and is hereby declared to be, as good and effectual, to all intents and purposes, as if taken by any officer in this State competent to take the same.

Sec. 4. Every commissioner appointed as aforesaid, before he shall proceed to perform any duty under and by virtue of this law, shall take and subscribe an oath or affirmation before the clerk of any court of record in the city or county in which such commissioner may reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of this Act, or the laws of this State; which oath or affirmation, certified to by the clerk, under his hand and seal of office, shall be filed in the office of Secretary of this State.

Sec. 5. Every commissioner appointed under this Act shall have power and authority to take depositions under a commission issued to him according to law, from any court in this State, to be used as evidence in any cause pending in a court of the same, when returned as prescribed by law.

Approved May 8, 1846.

(General Laws of 1846, 187, 188. P. D., 616, Arts. 3762–3766.)

(*i*.) On a close scrutiny of this Act, the following points suggest themselves: Bearing in mind that the Act itself designates the commissionership an "office," and that the Supreme Court has held commissioners to be officers (see Monroe v. Arledge, 23 Texas, 478), the inquiry arises, have they qualified as such in a single instance? The records in the State Department show beyond all question that they have not; that each qualified by taking the oath prescribed by its fourth section, "well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of

this Act or the laws of this State," instead of taking the oath required by each successive constitution of this State to be taken by "*all officers*" before entering upon the discharge of the duties of their offices. (Const. of the State of Texas of 1845, Art. 7, Sec. 1; *Id.* of 1866, Art. 7, Sec. 1; *Id.* of 1869, Art. 12, Sec. 1; *Id.* of 1876, Art. 16, Sec. 1.)

Could the Legislature empower "the clerk of any court of record"—such clerk not being an officer of this State, nor yet, like a notary public, an officer *publici juris*, to administer this *extra*-constitutional oath or affirmation, and to certify the same?

Again: The Act says that commissioners "shall continue in office during the pleasure of the Governor," while each of three of our constitutions provides that "the duration of all offices not fixed by this Constitution shall never exceed four years," and the fourth, in the same terms, limits the period to two years. (Const. of 1845, Art. 7, Sec. 10; *Id.* of 1866, Art. 7, Sec. 10; *Id.* of 1869, Art. 12, Sec. 38; *Id.* of 1876, Art. 16, Sec. 30.)

As there is no successorship in law or in fact in their office, can what is known as "the hold-over Act" of December 18, 1849, p. 10, be held to apply to them? If not, and they are qualified officers, did they not cease to be such at the end of four years?

It is to be observed that the Act only authorized the appointment of "one or more persons in each or such of the other States of the United States, or the District of Columbia"—not in the *Territories*, as chapter 76, p. 77, of the general laws of this State of 1876, erroneously assumes, and does not require that the Governor shall appoint to the extra-constitutional and extra-territorial office it creates "by and with the advice and consent of the Senate," as in case of county notaries public—*bonded* officers with almost identical powers. How the constitutional requirement in force since 1869, that "all civil officers shall reside within the State," can be evaded is not apparent. (Const. of 1869, Art. 12, Sec. 12; *Id.* of 1876, Art. 16, Sec. 14.) Nor yet the requirement of the Constitution of 1869, Art. 3, Sec. 14, while it was in force, that "no person shall be eligible to any office, *State*, county or municipal, who is not a registered voter in the State."

Can the Legislature hereafter, by a retroactive law, validate the acts of commissioners? (See Const. of 1876, Art. 1, Sec. 16.) Does not article 2 of the Constitution of 1876, clearly prohibit what is termed "judicial legislation"? If so, can the acts of commissioners be validated by the courts? The reader must answer these questions for himself.

It is deemed unnecessary to insert "An Act to authorize the Gov-

ernor to appoint commissioners of deeds, etc., in the Choctaw, Chickasaw, Cherokee and Creek Nations of Indians, on the northern border of Texas," of December 31, 1861, 21-22; P. D., 616-617, Arts. 3767-3771, as it is subject to all the questions made touching the Act of May 8, 1846 (*supra*, h).

In view of the foregoing inquiries, is it not advisable to avoid having deeds, etc., authenticated and certified by commissioners, and where they have been authenticated and certified by a Commissioner more than four years after his qualification, to have them re-authenticated and certified by some unquestionably competent officer, and thereupon duly recorded?

Possibly an Act might be framed that would make all registrable instruments that are actually copied in the county record books notice from and after its passage—which would not conflict with the Constitution. (See for analogy P. D., 833, Art. 4977, and 841, Art. 5021, which are evidently meant to operate as healing sections. But, query, as to their scope and effect?*)

OF THE ACKNOWLEDGMENT FOR RECORD.

(*When not by a married woman.*)

§ 20. (*a.*) When a deed, or other registrable written instrument, has been duly signed, sealed, delivered and attested by subscribing witnesses, and the grantor, if such be the agreement, or if not, the grantee, has decided what officer shall take the acknowledgment or proof thereof for record, as well as whether it shall be acknowledged or proven, it has next to be acknowledged, or to be proven. It is preferable in all cases to have it acknowledged.

(*b.*) Where a married woman (whose husband *must* join with her in a conveyance) is one of the parties, it is indispensable that it should be acknowledged by her; and it is preferable that it should also be acknowledged by her husband, though it appears that it may be proven as to her husband by one of the subscribing witnesses.

(*c.*) "The acknowledgment of an instrument of writing for the purpose of being recorded shall be by the grantor or person who executed the same appearing before some officer authorized to take such acknowledgment and stating

* The Books are now (secondary) evidence of all duly recorded registrable instruments. See Pope v. Graham, 44 Texas, 196; Peck v. Clark, 18 Texas, 239; see also General Laws of 1876, p. 21.—ED.

that he had executed the same for the consideration and purposes therein stated."

(Act to provide for the registry of deeds and other instruments of writing, of May 12, 1846, 237, Sec. 7. P. D., 838, Art. 5007.)

OF THE CERTIFICATE THEREOF.

(*d.*) —"and the officer taking such acknowledgment shall make a certificate thereof, sign and seal the same with his seal of office."

(Act to provide for the registry of deeds and other instruments of writing, of May 12, 1846, 237, Sec. 7. P. D., 838, Art. 5007.)

(*e.*) A certificate for a clerk of the county court (which may be modified so as to be used by any other competent officer), framed so as to fully comply with the law, is as follows:

The State of Texas, County of ————.

I, ————, as clerk of the county court of the county of ———— in the State of Texas, do hereby certify that on the ———— day of —— ——, 187—, in said county, personally appeared ————, the person who executed the within instrument of writing, and then and there acknowledged to me that he had executed—that is to say signed, sealed and delivered—the same, as his act and deed, for the consideration and purposes therein stated, and that he desired me to certify that he had so done, which I accordingly do.

In witness whereof I have hereunto set my hand and the seal of said court, in the clerk's office thereof, at ————, this ———— day of ————, 187—.

Seal of county Court.

————— —————

The above form causes the officer to certify not merely to the acknowledgment of the grantor that he had "executed" (which is a conclusion of law), but to the facts which amount to the execution of a deed—that he signed, sealed and delivered the same, etc. It is as full in that respect as the form provided to be used in cases of acknowledgment by married women.

(*f.*) It is desirable in all cases that the certificates appertaining to a registrable written instrument should be indorsed thereon, or at least written on the same sheet of paper, so as practically to become a part thereof, rather than to be annexed thereto. When annexed, it had best be done by means of the seal used by the officer, and

should recite the names of the parties and date of the instrument, so as to prevent its being fraudulently detached and annexed to some other instrument. For example, the certificate annexed should contain the following:

—"the instrument of writing to which this certificate is annexed, wherein ———— is the grantor and ———— is the grantee, and which bears date on the ——— day of ———, 187—."

(*g*.) When a conveyancer is employed to prepare and to see to the execution, etc. (registration inclusive), of a deed, it is his duty to do what he is called upon to do in the best manner. If he does not have it acknowledged rather than proven, and the certificate indorsed or at least written on the same sheet of paper instead of annexed, he fails to have the work he is employed to supervise done in the best manner.

An acknowledgment for record is, for obvious practical reasons, better than an additional subscribing witness, in case proof of the execution should be required.

OF ACKNOWLEDGMENT TO PASS TITLE AND FOR RECORD, AND TO MECHANICS', ETC., LIENS, BY A MARRIED WOMAN.

§ 21. (*a*.) In order to pass the title, as well as to admit the conveyance to record, to a homestead, or the separate property of any sort, whether real or personal, of a married woman, or to fix and secure the lien of a mechanic, contractor or material man upon a homestead, the law requires that the husband should join his wife in the execution of the instrument, and that she should be examined by a proper officer privily and apart from her husband.

(*b*.) As to the nature and extent of the homestead, see the Constitution of the State of Texas of 1876, Art. 14, Sec. 6, and Art. 16, Secs. 50, 51. See also, for allowance for homestead, Acts of 1876, Ch. 84, p. 106, Sec. 57.

(*c*.) As to separate property, see "An Act better defining the marital rights of parties," of March 13, 1848, 77, Secs. 2 and 3; P. D., 775-777, Arts. 4640-4642.

(*d*.) As to the only liens, save for the purchase money, by which a homestead may be incumbered, see "An Act to provide for and regulate mechanics', contractors' and other liens in the State of Texas," of August 7, 1876, 91, Sec. 4. It requires a contract in writing, "signed by the husband and wife, and acknowledged by her as required in making a sale of a homestead." (See also Const. of 1876, Art. 16, Sec. 50.)

The statute in force provides as follows:

(*e*.) Section 1. *Be it enacted by the Legislature of the State of Texas*, That when a husband and his wife have signed and sealed any deed or other writing, purporting to be a conveyance of any estate, or interest in any land, slave or slaves, or other effects, the separate property of the wife, or of the homestead of the family, or other property exempted by law from execution, if the wife appear before any judge of the Supreme or District Court, or notary public, and being privily examined by such officer, apart from her husband, shall declare that she did freely and willingly

sign and seal the said writing, to be then shown and explained to her, and wishes not to retract it, and shall acknowledge the said deed or writing, so again shown to her, to be her act, thereupon such judge or notary shall certify such privy examination, acknowledgment and declaration, under his hand and seal, by a certificate annexed to said writing, to the following effect or substance, viz.:

"State of Texas, County of ———.

"Before me, ———, judge of or notary public of ——— county, personally appeared ———, wife of ———, parties to a certain deed or writing bearing date on the ——— day of ———, and hereto annexed, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said ———, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it. To certify which, I hereto sign my name and affix my seal, this ——— day of ———, A. D. ——.

——— ——— [L. S.]

But any certificate showing that the requisites of the law have been complied with, shall be as valid as the form here prescribed; and such deed or conveyance, so certified, shall pass all the right, title and interest which the husband and wife, or either of them, may have in or to the property therein conveyed.

Sec. 2. When a husband and wife have signed and sealed any deed of the character described in the first section of this Act, out of this State but within the United States or any of their territories, if the wife appear before any judge of a court of record having a seal, in any of said States or Territories, and be examined and make the declarations and acknowledgments provided for in said section, and such judge shall make a certificate thereof in the manner provided for in said section, and attest the same under his hand and the seal of his court, such deed shall have the

same force and effect as if the same had been done in this State before any of the officers named in said section; and when any such deed shall have been signed and sealed out of the United States, such examinations, declarations and acknowledgments may be taken or made before any public Minister, Charge d'Affaires or Consul of the United States, and the certificate of such Minister, Charge d'Affaires or Consul, in the manner and form provided for in said section, and attested under their hand and official seal, shall have the same force and effect as if such examination, declaration and acknowledgment had been taken or made and certified in this State, before any of the officers named in said first section.

Sec. 3. This Act is intended to apply to the property mentioned in the twenty-second section of the seventh article of the Constitution, as well as to the property owned or claimed by the wife before marriage, and that acquired afterwards by purchase, gift, devise or descent.

Sec. 4. That all former laws and parts of laws concerning the mode of conveyance of property in which the wife has an interest, be and the same are hereby repealed.

Approved April 30, 1846.

("An Act defining the mode of conveying property in which the wife has an interest," Laws of 1846, 156, 157. P. D., 261-263, Arts. 1003-1006.)

(*f.*) While it is to be noted that the statutory form does not embody all that it is required to contain by the terms of the Act in which it is incorporated, which require the deed to be "*then shown* and explained to her"—"so *again shown* to her," it supplies a material omission by providing that she shall acknowledge it to have been "delivered." It also fails to show an acknowledgment by, or proof as to, the husband, who is, in law, an indispensable party to the deed.

(*g.*) Notwithstanding the Act declares that "such deed or conveyance, so certified, shall pass all the right, title and interest which the husband and wife, or either of them, may have in or to the property therein conveyed," it can scarce be construed to reduce him to coverture—to bind him without an acknowledgment by, or proof as to, himself, embodied in the same or in a separate certificate.

(*h*.) The following form of certificate of acknowledgment by a husband and wife, as it recites what is required to be shown by the Act and what is contained in the form given in the Act, together with what is required by the Registry Act, is deemed preferable:

The State of Texas, County of ———.

I, ———, as ——— of the county of ——, State of Texas, do hereby certify that on the —— day of ———, in 18—, in said county, appeared —— ——, one of the makers of the within instrument of writing, who then and there acknowledged to me that he had executed—that is to say, signed, sealed and delivered—the same as his act and deed for the consideration and purposes therein stated, and that he desired me to certify that he had so done, which I accordingly do. I do further certify, that afterwards on the same day, and in said county, before me as ——— aforesaid, personally appeared ———, the wife of said ———, and who is one of the makers of said instrument bearing date on the —— day of ———, 18—, and having been examined by me privily and apart from her said husband, and having had said instrument then by me shown and fully explained to her, she, the said ———, did thereupon acknowledge the same, so again shown to her, to be her act and deed, and did declare that she had freely and willingly signed, sealed and delivered the same for the consideration and purposes therein stated, and that she wished not to retract it, and desired me so to certify, which I accordingly do.

To certify all which, I hereto sign my name and affix——— [L. S.] seal ———, this —— day of ———, A. D. 18—.

(*i*.) Homestead may be abandoned by the husband and wife by a deed for that express purpose.—*Edmonson* v. *Blessing*, 42 Texas, 596.

(*j*.) A homestead is where the family resides, or the property dedicated as such residence by the husband.—*Holliman* v. *Smith*; 39 Texas, 357.

Query as to this under the Constitution of 1876, Art. 16, Sec. 51?—ED.

(*k*.) The right of the homestead does not attach until the property is paid for.—*Joplin* v. *Fleming*, 38 Texas, 526.

(*l*.) Where a wife voluntarily joins her husband in a conveyance of the

homestead, from that time it ceases to be the homestead.—*Houghton* v. *Marshall*, 31 Texas, 196.

(*m*.) A total relinquishment or abandonment, with the intention not again to claim a homestead, is necessary in order to subject it to forced sale.—*Shepherd* v. *Cassiday*, 20 Texas, 24; *Gouhenant* v. *Cockrell*, 20 Texas, 96.

(*n*.) A homestead necessarily includes the idea of a house, cabin or tent which is the home of a family.—*Franklin* v. *Coffee*, 18 Texas, 413.

Query as to this under the Constitution of 1876, Art. 16, Sec. 51?—ED.

(*o*.) Although property be a homestead at the time of the execution of a mortgage thereon by the husband and wife, a judgment of foreclosure and sale may be obtained if it be not a homestead when the judgment is rendered.—*Lee* v. *Kingsbury*, 13 Texas, 68.

(*p*.) As to how a wife can abandon both her husband and her homestead, see Earle v. Earle, 9 Texas, 630, and Trawick v. Harris, 8 Texas, 312.

(*q*.) An instrument by which a married woman attempts to convey her separate estate, which is not executed in the manner required by the statute, is a nullity.—*Hampshire* v. *Floyd*, 39 Texas, 103, and *Tucker* v. *Carr*, 39 Texas, 98.

(*r*.) An acknowledgment of a married woman failing to show that she willingly *signed* the instrument, though correct in every other respect, is fatally defective.—*Smith* v. *Elliott*, 39 Texas, 201.

(*s*.) A married woman cannot charge her separate property for any purpose except for necessaries for herself and family, or for the benefit of her separate property.—*Rhodes* v. *Gibbs*, 39 Texas, 432.

(*t*.) A deed of a married woman not acknowledged as the statute requires is a nullity, and passes neither legal nor equitable title. It is the examination, not the signature, that gives validity to such a deed.—*Berry* v. *Donley*, 26 Texas, 737.

(*u*.) Married women will not be allowed to perpetrate a fraud in recovering property sold at their instance and for the benefit of their estate.—*Ryan* v. *Maxey*, 43 Texas, 192.

(*v*.) A married woman will not be permitted to act fraudulently or inequitably to the injury of others.—*Cravens* v. *Booth*, 8 Texas, 243.

(*w*.) Where the husband leaves his home and is absent for several years, the wife acquires a right to manage, control and dispose of the common property, as well as of her separate property.—*Wright* v. *Hays*, 10 Texas, 130.

(*x*.) Where the husband was absent for nearly six years, and in the meantime the wife had purchased a tract of land and made a deed of gift of a portion of it to her child by a former husband, the deed of gift was sustained.—*Id*.

(*y*.) The Act respecting the privy examination of a married woman

does not apply where, on account of the absence of the husband, she is invested with the power of disposition over the common and her separate property.—*Id.*

(*z.*) The voluntary acts and representations of a married woman, made to deceive, and which do deceive others, to their prejudice, will be binding upon her.—*Cravens* v. *Booth*, 8 Texas, 243.

(*aa.*) Where the certificate of the privy examination of a married woman is in due form, in order to impeach its veracity, it is not sufficient to allege that there was no privy examination, that the contents (of the deed) were not made known to her, etc.; the certificate is conclusive in the absence of an allegation of f aud or imposition; as, for instance, that there was a fraudulent combination between the notary and the parties interested.—*Hortley* v. *Frosh*, 6 Texas, 208

(*bb*) The privy examination of the wife, apart from her husband, is indispensable to the conveyance of her separate property.—*Callahan* v. *Patterson*, 4 Texas, 61.

(*cc.*) The conveyance of a married woman, made under the form of law, is as valid as if made by a single woman; and its effects can be avoided only by showing mistake, fraud or duress. The purchaser has no concern with the investment of the proceeds. (Separate opinion of Judges Hemphill and Wheeler.—*Id.*

(*dd.*) A very peculiar Act has recently been enacted, which declares that it makes "valid and binding" certificates "wanting in any word or words *necessary* to be contained in such certificate of acknowledgment *by the requirements of the statutes* in such cases made and provided"! (Act to validate certificates of acknowledgment of married women to deeds of conveyance, letters of attorney, and other written instruments, of July 28, 1876, 61.)

(*ee.*) It may here be remarked that as the acknowledgment by a married woman is made by law an essential requisite of a deed or lien, it is preferable that it should be endorsed upon, rather than annexed to, the instrument.

(*ff.*) In order that there may be no mistake as to this matter, it is here recapitulated that a deed or mechanic's lien by a married woman, in order to be valid, must—

First—Be signed, sealed and delivered by her husband, and acknowledged by, or proven by a subscribing witness or by subscribing witnesses, as to him, just as though it was his exclusive act.

Second—It must also be signed, sealed and delivered by the wife, and besides, on a privy examination, acknowledged by her, in order to make it binding upon her, as well as to admit it to record.

(*gg.*) It is not perceived that where a *fee simple* title is sought to be conveyed, the Act which makes the acknowledgment by a married

woman essential to the transfer of her title, as well as to its registration, dispenses with the two or more credible subscribing witnesses required by the Act concerning conveyances.

It is true that neither the consideration nor the execution of a deed can be called in question unless the affidavit required by law for that purpose be made and filed, and due notice given. If that be done—and the mere fact that there are subscribing witnesses may in many cases prevent it—it is well to have subscribing witnesses to prove its execution, and, if they know the fact, the actual consideration and its payment. It is the safer practice, in all cases, to have a deed attested by two or more credible witnesses.

OF PROOF FOR RECORD BY A SUBSCRIBING WITNESS, OR BY SUBSCRIBING WITNESSES.

§ 22. (*a*.) Where a registrable written instrument is made by a person competent to contract—that is to say, a person of age and *sui juris*—and is sought to be recorded, the law provides that it may be either acknowledged--which is preferable, as it furnishes another witness--or proven by one or more of the subscribing witnesses, for the purpose of being recorded.

(*b*.) "The proof of any instrument of writing for the purpose of being recorded, shall be by one or more of the subscribing witnesses personally appearing before some officer authorized to take such proof, and stating on oath that he or they saw the grantor or person who executed such instrument subscribe the same, or that the grantor or person who executed such instrument of writing acknowledged in his or their presence, that he had subscribed and executed the same for the purposes and consideration therein stated, and that he or they had signed the same as witnesses, at the request of the grantor or person who executed such instrument, and the officer taking such proof shall make a certificate thereof, sign and seal the same with his official seal."

("An Act to provide for the registry of deeds and other instruments of writing," of May 12, 1846, 236, sec. 8. P. D., 838-9, Art. 5008.)

(*c.*) Attention is here called to two decisions of the Supreme Court of this State which are deemed improvident and calculated to mislead.

It is enough that the affidavit state that the witness saw the grantor "subscribe the same," without saying anything about the consideration, because a different consideration from that "therein stated" may be proved.—*Monroe* v. *Arledge*, 23 Texas, 479.

The "at the request of the grantor" relates to the second, not the first clause.—*Dorn* v. *Best*, 15 Texas, 65.

Execute is equivalent to subscribe in the first clause.—*Id.*

As the facts which on principle as well as by the express requirements of our statutes constitute the execution of an absolute deed passing the fee simple title to land, are the signing, the sealing (a scroll being permissible as the substitute for a seal), and the delivery in the presence of two or more credible subscribing witnesses, it may well be doubted whether proof as to signing alone, which amounts to only a step in the progress of the execution of the deed, is sufficient. It has been rightly held that a deed takes effect from the date of its delivery, and the delivery must be shown (see § 17, b, d, and e), for a deed, though signed and sealed, if never delivered would never take effect.

If, as appears to be the case, the comma* has through error or mistake been placed after instead of before the words "for the purposes and consideration therein stated," those words should in all cases be embodied in a certificate of proof. The consideration cannot be impeached unless an affidavit for that purpose be made, to lay the foundation for the introduction of proof (P. D., 148, Art. 228), and the fact that the consideration is proved may prevent the affidavit from being made.

If the comma be misplaced, as suggested, the "at the request of the grantor" relates to both clauses. Subscribing witnesses are not in law authorized to sign of their own motion, or at the request of any one save the person whose witnesses they are—the grantor.

It is also to be noted that execute is not equivalent to subscribe in the first clause, or indeed anywhere; for to execute means to sign, seal and deliver, as the statute requires, which is more than merely to subscribe or sign.

(*d.*) The words "instrument of writing" in the section above

* In Paschal's Digest two dashes are used which are not found in the enrolled Act.—ED.

cited signify a completed, not a partly completed instrument. The word "executed," twice used, corroborates this construction.

The object of the Legislature was obviously to provide for the proof for record by a subscribing witness, or by subscribing witnesses, of a completed instrument of writing—not of a partly completed one. It was intended that such witness or witnesses should make proof from actual personal knowledge, or else from the express acknowledgment of the grantor "that he had subscribed and executed the same" (the word executed meaning completed as to all essentials) "for the purposes and consideration therein stated" (not for any other purposes, or for any other consideration), "and that he or they had signed the same as witnesses at the request of the grantor," and not unasked, or at the request of any other person.

It can scarce be contended that it was meant that a deed should be admitted to record if only partly executed, or that if completed it was intended to be admitted to record on proof of one fact of the several essential ones which would together in the aggregate amount to its execution. (See *infra*, h.)

(*e.*) It is not meant to intimate that our courts will not hold that a certificate that a subscribing witness or witnesses stated on oath that "he or they saw the grantor or person who executed such instrument subscribe the same," is sufficient *to admit it to record* only; but attention is called to the above points in order to suggest that a cautious conveyancer would prefer to have a certificate of proof for record not to be barely sufficient, but rather to embody all the material facts constituting full proof of execution—of which the following would be a convenient form:

Form of certificate (on proof from actual knowledge) for record.

(For a county clerk.)

The State of Texas, County of —— —.

I, ———, as the clerk of the county court of the county of ———, in the State of Texas, do hereby certify that on the ——— day of ———, 18—, in said county personally appeared before me ——— one of the subscribing witnesses to the instrument of writing on the reverse hereof, who is to me well known, who then and there on oath declared that he saw ———, the grantor therein named, execute, that is to say, sign, seal and deliver the same, as his act and deed, stating that he did so for the purposes and consideration therein stated; and that he thereupon requested the subscribing

witnesses whose names are signed thereto as such, to sign the same, which they accordingly did.

In witness whereof I have hereunto set my hand and the [SEAL.] seal of said court, in the clerk's office thereof, this ——— day of ———, A. D. 18—.

——— ———

Clerk, etc.

(If by deputy) *By his deputy,*

——— ———

This form can be easily modified so as to answer in cases where the witness or witnesses did not actually see the deed executed; where the grantor, after executing it, acknowledged its execution.

It can without difficulty be adapted to the other officers (than clerks of county courts), authorized by law to take and certify acknowledgments and proofs for record.

(*g*.) The language and spirit of the statutes of Texas concerning conveyancing and registration indicate that if there be only one subscribing witness to a conveyance, or other registrable instrument, it cannot be proven for record by his oath, though if there be two or more, proof by one will suffice.

(*h*.) The probate and record of an instrument entitled to registration supplies the place of common law proof of its execution, and where it has not been impeached, is held as effectual as if its execution had been established according to the common law rules of evidence. (Notary's seal presumed.)—*Ballard* v. *Perry*, 28 Texas, 348.

(*i*.) In most cases where a deed would be evidence—as an ancient deed—without proof of its execution, the power under which it purports to have been executed will be presumed.—*Johnson* v. *Shaw*, 41 Texas, 428.

(*j*.) It is one of the fundamental rules of evidence that all private writings must be proved to be genuine before they can be admitted as evidence. One of the exceptions to this rule is where a deed is thirty years old, in which case it is presumed that proof of its execution by a subscribing witness or otherwise, is out of reach, and the deed is said to prove itself. The principle underlying this exception seems applicable to all ancient writings which might be evidence of present right.—*Stroud* v. *Springfield*, 28 Texas, 649.

(*k*.) The oath of a subscribing witness to a bond for title that "to the best of his knowledge and belief he signed the same as a witness, and that James Price (the obligor) acknowledged that he signed it for the purposes therein expressed," held to be sufficient, especially under the Act of February 5, 1841.—*Stramler* v. *Coe*, 15 Texas, 211.

(*l*.) Conveyances of land by public act before a judge or notary were included in the provisions of the Act of December 20, 1836 (H. D., Art. 2754), and required to be proved and recorded in the manner therein prescribed within twelve months after that time, under pain of being supplanted by a subsequent conveyance to an innocent purchaser.—*Watson* v. *Chalk*, 11 Texas, 89.

(*m*.) A deed of an alcalde, which was of itself, at the time of its execution, full evidence of title, must now be proved; but when its execution is once proven, the instrument itself becomes full proof of all it originally evidenced.—*Lee* v. *Wharton*, 11 Texas, 61.

(*n*.) Where the officer who had executed the protocol, and who had issued to the party interested the testimonio, or second original, appeared before the county clerk and acknowledged his signature to the certificate authenticating the testimonio; held, that it was sufficient under the thirty-fifth section of the Act of 1836 (H. D., Art. 2752) to authorize the recording of the testimonio.—*Edwards* v. *James*, 7 Texas, 372.

(*o*.) Under the registry Act of 1836, an instrument under which title was claimed, and which was legal and authentic without subscribing witnesses, was admissible to record upon proof of the handwriting of the signer; and *it seems* that where the record was made, the presumption is that the proof was adduced.—*Paschal* v. *Perez*, 7 Texas, 348.

(*p*.) Where an instrument is not proven in the mode required for its admission to record, it acquires no authenticity from having been in point of fact recorded.—*Craddock* v. *Merrill*, 2 Texas, 494.

OF ACKNOWLEDGMENT WHERE THE GRANTOR IS UNKNOWN TO THE OFFICER, OR PROOF WHERE THE SUBSCRIBING WITNESSES ARE UNKNOWN.

§ 23. (*a*.) "That a person who executed any instrument of writing, or any subscribing witness to any such instrument, shall appear before any officer authorized to take acknowledgments or proofs of such instruments, for the purpose of acknowledging or proving such instrument for record, if such grantor, or person who executed such instrument, or subscribing witness, shall be personally unknown to such, his identity, and his being the person he purports to be on the face of such instrument of writing, shall be proven to such officer; which proof may be made by witnesses known to the officer, or the affidavit of such grantor, or person who executed such instrument, or subscribing witness, if such

officer shall be satisfied therewith; which proof or affidavit shall also be indorsed on such instrument of writing."

("An Act to provide for the registry of deeds and other instruments of writing," of May 12, 1846, 238, sec. 10. P. D., 839, Art. 5010.)

(*b*.) To comply with the requirements of the foregoing section it is necessary:

1. That the grantor or subscribing witness must make affidavit of his identity, and being the person he purports to be, etc.

2. That the affidavit must not be annexed to, but must be "indorsed on such instrument of writing."

3. That the officer in his certificate must recite that the grantor or witness were unknown to him; that the identity and being the person he purports to be, etc., were thereupon proven to his satisfaction by the affidavit by him taken, indorsed thereon, and shall thereupon certify that the grantor acknowledged, etc., or that the subscribing witness proved the same—using the form of certificate of acknowledgment or of certificate of proof as given above, so far as applicable.

(*c*.) Section 8 of "An Act to regulate the appointment and define the duties of notaries public," of June 24, 1876, 30, is purposely omitted from this work. It applies exclusively to notaries public. Hence, were it constitutional, county clerks and other officers are not authorized to act under it. It does not amend, or profess to amend, section 10 of the act of May 12, 1846, above inserted. It provides that a notary shall act on a mere introduction. As it takes care not to require that the person introducing shall be personally known to the notary, or shall know the person introduced, and says that an *alleged* residence shall suffice, it was difficult to comprehend that it was framed for any honest purpose, or to account for its having been passed and approved as an emergency Act. Certain it is that no business man, even were it held not unconstitutional, would permit a deed to himself to be acknowledged or proved under it, and no notary public who has regard for his character would, after having been cautioned as to its nature, follow its requirements. On the contrary, he would take care to strictly pursue the provisions of section 10 of the Act of May 12, 1846. (See *supra*, § 23, a.)

OF PROOF FOR RECORD WHERE SUBSCRIBING WITNESSES ARE DEAD, OR THEIR PLACE OF RESIDENCE IS UNKNOWN, OR THEY RESIDE OUT OF THE STATE.

§ 24. "That the above recited Act shall hereafter read as follows: That when the subscribing witnesses to any instrument of writing may be dead, or their place of residence unknown, or when they reside out of the State, an affidavit thereof may be made and attached to such instrument; after which it may be proven for the purpose of being recorded, by the evidence of the handwriting of the grantor or person who executed such instrument, and at least one of the subscribing witnesses; or when the grantor or person who executed such instrument signed by making his mark, by proof of the handwriting of both the subscribing witnesses; which evidence shall consist of the deposition or affidavit of two or more disinterested persons, in writing, attached to such instrument; and the officer taking such proof shall make a certificate thereof, sign and seal the same with his official seal."

(An Act to amend the ninth section of "An Act to provide for the registration of deeds and other instruments of writing, approved May 12, 1846," of March 6, 1863, 26, 1. P. D., 839, Art. 5009.)

Resort is so seldom had to the proof authorized by this Act, and its requirements are so explicit, that it is deemed unnecessary to give a form embodying its provisions.

OF THE COUNTY WHERE CONVEYANCES, ETC., SHOULD BE DEPOSITED FOR RECORD AND RECORDED.

§ 25. (*a.*) "All deeds, conveyances, mortgages and other liens, shall be recorded in the county where the property is situated."

("An act organizing the inferior courts and defining their powers and jurisdiction," of December 20, 1836, 155, Sec. 35. P. D., 832, Art. 4973.)

(*b*.) It is deemed unnecessary to cite section 37 of this Act (P. D., 834, Art. 4289) as amended by the Act of May 10, 1838 (P. D., 834, Art. 4931), as it only relates to deeds, etc., already executed—not thereafter to be made.

(*c*.) It is well settled that deeds, etc., must be recorded in the counties where the lands are situated. (P. D., 832, 834, Arts. 4373, 4930–4932, notes 1081–1092.)—*Hawley* v. *Bullock*, 29 Texas, 216.

(*d*) The record in one county of a deed to land lying in another county is not such a record as can be used in evidence of title, nor such as would authorize the use of a copy thereof for the same purpose.—*Sullivan* v *Dimmitt*, 34 Texas, 114.

(*e*.) No statute has ever been enacted in Texas authorizing or permitting the registration of deeds or conveyances of any sort, of land in any other county than the organized county in which the land is situate. If such organized county becomes disorganized the law provides as follows:

(*f*.) "That all counties that have heretofore been legally organized, and that have lost their county organization by reason of Indian incursions, or from any other cause, shall be for all judicial purposes, and for the registration of deeds, mortgages, and all other instruments that are now or may hereafter be required or allowed by law to be recorded, attached to the organized county whose county seat is nearest the county seat of such disorganized county, and so remain attached until such disorganized county shall again be legally organized."

("An Act concerning disorganized counties," of November 5, 1866, Ch. 91, 90.)

(*g*.) It is to be observed that this Act applies only to counties that after having been organized become disorganized, and not to non-organized or mere geographical counties. It clearly indicates by the words "all judicial purposes, and for the registration of deeds," etc., that the Legislature regarded the registration of deeds, etc., as not being included in the phrase "all judicial purposes."

(*h*.) The previously enacted Acts, Chapter 87 of the Acts of 1860, 119–121, and Chapter 40 of the Acts of 1861, 31, are to attach unorganized (not disorganized) counties to organized counties for judicial and other purposes—the other purposes being expressed—being the assessment and the collection of taxes.

(*i.*) "In all cases where, from the want of qualified jurors or other causes, the courts cannot properly be held in any county, it shall be the duty of the district judge to certify such fact to the Governor, and the Governor shall by proclamation attach such county for judicial purposes to that county the county seat of which is nearest the county seat of the county so to be attached."

(Constitution of 1869, Art. 12, Sec. 24.)

(*j.*) If the Acts of 1860 and 1861, and the section of the Constitution above cited, contained, instead of "judicial purposes," the words "all non-judicial purposes," they might properly be construed to authorize the registration of deeds, etc., for land in the counties to which unorganized counties are attached. As it is, the registration of deeds, etc., being not a judicial purpose, a misconstruction of unambiguous language cannot authorize them to be so recorded, and retroactive legislation being expressly forbidden (Constitution of 1876, Art. 1, Sec. 16), if so recorded their registration cannot be validated.

(*k.*) Deeds of land and other registrable instruments touching real estate, in order to operate as *notice*, must be recorded in the organized county from the territory or part of the territory of which the land to form a new county (which exists only as a possible or geographical county until organized) is to be made.

(*m.*) Where a deed has been properly recorded in the county in which the land lies, it need not be again recorded in a new or other county.—*McKissick* v. *Colquhoun*, 18 Texas, 148.

(*n.*) It is notice to purchasers.—*Melton* v. *Turner*, 38 Texas, 81.

(*o.*) Indeed, as the section of the Constitution of 1869 above cited only authorizes the Governor, on certificate of the district judge that "from the want of qualified jurors, or other causes, the courts cannot properly be held in any county," to, "by proclamation, attach such county for judicial purposes"—not for any other purpose or purposes—it appears to have precluded the Legislature from assuming to do so, as it did in chapters 13 and 15 of the Acts of 1870, in chapters 13, 16, 39, 63 and 121 of the Acts of 1871, in chapters 12, 133, 157 and 160 of the Acts of 1874, and in chapters 17, 18, 39, 40, 47, 67, 81 and 83 of the Acts of 1875—all of which were enacted while the Constitution of 1869 was in force.

(*p.*) Where, through mistake of law, a deed has been recorded,

not in the organized county from which, in whole or in part, a geographical county has been taken, but in some county to which the land embraced in it never belonged, to which the geographical county has been attached for judicial purposes alone, constitutionally by the Governor, or unconstitutionally by the Legislature, it is the safer course to remedy the error by having it promptly recorded in the organized county in which the land lay when the unorganized county was created. No other registration would be good in law, and registration in a wrong county, as has been stated, cannot be cured by retroactive legislation.

(*g.*) The recording of instruments not required, or affirmatively permitted, by law to be recorded, is not notice.—*Burnham* v. *Chandler*, 15 Texas, 441.

OF THE DEPOSIT FOR RECORD.

§ 26. (*a.*) When a registrable written instrument is duly certified on proper acknowledgment or proof for record, and it is ascertained where it ought to be deposited for record, it must next be deposited for record and recorded.

(*b.*) Sec. 12. When any instrument of writing authorized by law to be recorded shall be deposited in the recorder's* officer for record, if the same shall be acknowledged or proved in the manner prescribed by law for record, the recorder shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties, and the date and nature thereof, the time of delivery for record; and shall give the person depositing the same, if required, a receipt specifying the particulars thereof.

(*c.*) Sec. 13. Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him† which is deposited with him for record, with the acknowledgments, proofs, affidavits and certificates written on or attached to the same, and all other papers referred to and

* The first section of this Act makes the clerks of the county courts of the several counties of this State "the recorders for their respective counties.

† An instrument improperly admitted to record cannot be proved by certified copy —Kirkpatrick v. Pope, 39 Texas, 318.

thereto annexed, in the order and as of the time when the same shall have been deposited for record, by entering them, word for word and letter for letter, and noting at the foot of such record all interlineations,* erasures and words visibly written on erasures, and noting at the foot of the record the hour and day of the month and year when the instrument so recorded was deposited in his office for record.

(*d.*) Sec. 14. Every such instrument of writing shall be considered as recorded from the time it was deposited for record;† and the recorder shall certify and attach to every such instrument of writing so recorded the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded, deliver the same to the party entitled thereto, or to his order.

("An Act to provide for the registry of deeds and other instruments of writing," of May 12, 1846, 239, Secs. 12, 13 and 14. P. D., 840, Arts. 5012, 5013, 5014.)

OF DEEDS CONVEYING ANOTHER OR LESS ESTATE THAN AN ABSOLUTE FEE SIMPLE TO LAND.

§ 27. (*a.*) Having traced the successive steps by which a deed conveying the absolute fee simple title to land is completed, authenticated and, on ascertaining the proper county in which it is to be recorded, delivered to the clerk for registration, it remains, next in order, to treat briefly of other deeds.

(*b.*) It must be always borne in mind that until the actual payment of the purchase money (the consideration), the title does not pass. This is an essential requisite to a deed, beyond and in addition to its delivery, according to repeated decisions of the Supreme Court of the State of Texas. (§ 8, u, and § 11, f, n; Reeves v. Petty, 44 Texas, 249, and a later unpublished case.)

* An interlineation or erasure can only be brought to the knowledge of the Supreme Court by a bill of exceptions or statement of facts, and not by a fac simile.—Dikes v. Monroe, 15 Texas, 236.

† Registrable instruments, when duly acknowledged or proved, certified and delivered to the clerk for record, take effect as notice from the time when delivered.—Throckmorton v. Price, 28 Texas, 605.

A party so delivering his deed is not bound to see that the clerk actually does his duty by recording it.—Id. [But query as to this. If the party most interested is not bound to see that it is recorded, who is?—ED.]

Particular attention is called to the statutory provisions as to the deeds, embraced in this caption, here re-inserted.

(*c.*) "Sec. 14. All alienations of real estate, made by any person purporting to pass or assure a greater right or estate than any such person may lawfully pass, or assure, shall operate as alienations of so much of the right and estates in such lands, tenements, or hereditaments as such person might lawfully convey, but shall not pass or bar the residue of said right or estate purporting to be conveyed or assured; nor shall the alienation of any particular estate on which any remainder may depend, whether such alienation be by deed or will; nor shall the union of such particular estate with the inheritance by purchase or by descent, so operate as to defeat, impair or in any wise to affect such remainder.

(*d.*) Sec. 15. Every estate in lands which shall hereafter be granted. conveyed or devised to one, although other words heretofore necessary at common law to transfer an estate in fee simple be not added, shall be deemed a fee simple, if a less estate be not limited by express words, or do not appear to have been granted, conveyed or devised by construction, or operation of law.

(*e.*) Sec. 18. An estate of freehold or inheritance may be made to commence in future, by deed, in like manner as by will.

(An Act concerning conveyances, of February 5, 1840, 153–158, § 3, n, o and r.*)

(*f.*) From these sections it is fairly deducible that conveyances of any other or less estate, whether absolute or conditional—to take effect at once, or in the future—than an absolute fee simple title, that are known to the common law, and that may not be prohibited by the Constitution and laws of Texas, are permissible.

(*g.*) While a grantor who may attempt to pass by deed a greater estate than he has, will only pass such estate as he has, the creation

* Reference is not here made to Hartley's, Oldham & White's or Paschal's Digest, because section 18 (e) is omitted in them. The whole of this Act, except sections 6 (f), 9 (i), 10 (j) and 11 (k), and so much as relates to slaves, is believed still to remain in force—though section 5 (e) cannot, as to chief justices, have effect, as the office of county chief justice no longer exists.—ED.

of estates for years, and of life estates with remainders (whether by deed or by will), is recognized as being lawful.

(*h*.) Care must be taken in preparing a conveyance of a less estate than one of fee simple (an estate for years, or a life estate, for example), to express clearly in the deed the precise nature of such less estate. Indeed, it would be safer to state in terms that it is intended that the fee shall not be conveyed, for the fee will be construed to pass "if a less estate be not limited by express words."

(*i*.) An estate for years, for life, or by way of remainder, or in fee simple "may be made to commence in future, by deed in like manner as by will."

OF QUIT CLAIM DEEDS.

§ 28. (*a*.) A quit-claim deed is a deed of release; an instrument by which all claims to an estate are relinquished to another, without any covenant or warranty, express or implied.

(*b*.) The words used in the instrument are that the maker "has remised, released *and forever quit-claimed* all his right, title and interest."

(*c*.) A purchaser who has taken a quit-claim deed is not entitled to protection in a court of equity as a purchaser for a valuable consideration without notice; he takes under such deed only the interest his vendor could lawfully convey.—*Harrison* v. *Boring*, 44 Texas, 225.

(*d*.) A deed which binds the vendor to warrant "the title hereby conveyed against the lawful claims of all persons claiming the same, or any part thereof, by, through or under him," is but a quit-claim deed, notwithstanding the special warranty, for that refers to the estate or title sold, and not to the land.—*Id*.

Query: Is such deed a quit-claim deed? (See *supra*, a.)—ED.

(*e*.) A vendee by a quit-claim deed does not take by estoppel an after-acquired title by the grantor.—*Manwaring* v. *Terry*, 39 Texas, 67.

(*f*.) He only acquires such title as the vendor had when he made the quit-claim deed.—*James* v. *Drake*, 39 Texas, 143; *Carter* v. *Wise*, 39 Texas, 273.

(*g*.) The grantee by a quit-claim deed, it is said, takes the risk of a title, unless there be fraud.—*Dikes* v. *Miller*, 24 Texas, 417.

(*h*.) Recitals in a quit-claim deed of a remote vendor not evidence of a prior unregistered conveyance.—*Graham* v. *Hawkins*, 38 Texas, 628.

OF DEEDS APPARENTLY, BUT NOT REALLY, ABSOLUTE.

§ 29. (*a*.) As conveyances of land apparently, but not really, absolute are frequently (and always unnecessarily) made in Texas, it is deemed advisable to here point out that they cause needless cost and risk, and should be avoided.

(*b.*) It is quite common, where land is sold on a credit, or partly on a credit, for the vendor to execute at once an absolute deed, and at the same time to cause the vendee to execute a simple mortgage, a mortgage with a power to sell, or a deed of trust, to secure the payment of the purchase money.

(*c.*) It has been settled by the Supreme Court of Texas that all instruments executed at or about the same time between the same parties, and in relation to the same subject matter, are to be construed together as forming parts of one transaction. (*Infra*, § 30, s.)

(*d.*) Besides, in such case, when the purchase money or consideration becomes due and is paid, the execution and registration of a third instrument (generally a satisfaction or release, though an absolute deed would be preferable) is rendered necessary in order that the title may appear clear of record.

(*e.*) In the meantime, before payment, trespass to try title cannot be brought for the land by the vendee against the vendor. (See *supra*, § 8, l.)

(*f.*) If it were brought by the vendee, when on the trial he offers in evidence his deed absolute on the face, the defendant needs only to offer in evidence the mortgage or deed of trust to defeat his recovery.

(*g.*) If the purchase money is paid, and the vendee offers in evidence his deed, and the vendor in turn offers his mortgage or deed of trust, it devolves on the vendee to offer in evidence the release or satisfaction thereof.

(*h.*) A bond for title, duly executed, authenticated and recorded, would show the whole transaction in a sale on credit in a less expensive and complicated, and at the same time in a more straightforward and business-like, manner.

(*i.*) On the payment of the purchase money as stipulated, an absolute deed, with such covenants as have been agreed upon, would be sufficient, and would thereafter be the only muniment of title needed in a suit, besides and in addition to the original grant and the mesne conveyances, if any, to the vendee. (See *supra*, § 8, c–y.)

OF TITLE BONDS, OR BONDS FOR TITLE.

§ 30. (*a.*) "Every title, bond, or other written contract in relation to lands, may be proved, certified or acknowledged and recorded, in the same manner as deeds

for the conveyance of land, and such proof, acknowledgment or certificate, and the delivery of such bond or contract to the clerk of the proper court, to be recorded, shall be taken and held as notice to all subsequent purchasers of the existence of such bond or contract."

("An Act concerning conveyances," of February 5, 1840, 155, sec. 7 (§ 3, g).

(*b.*) A title bond, or bond to make title to land, signifies an obligation in writing on paper or parchment, signed, sealed and delivered, whereby the obligor binds himself, his heirs, executors and administrators, on the performance of the condition, which is either the payment of money, or the performance of something else, to make a deed for a specific tract or to specified tracts of land to the obligee.

(*c.*) Such bond, in order that it might not be called in question, should be witnessed by two or more subscribing witnesses, and acknowledged or proven for record and delivered to the clerk of the county court of the county where the land lies, for record.

As in case of a deed, where a new county is created out of the territory of an organized county and such new county is not yet organized, the title bond must be recorded in the organized county out of which the new county is made.

(*d.*) Title bonds may be made to contain any stipulations or contracts not contrary to law, upon which the parties may agree. They should be clearly expressed. The statutes of Texas contain no forms of such bonds. The following form may be modified so as to meet the views of those who sell and buy lands on a credit:

Form of Title Bond.

(*e.*) The State of Texas, County of ———.

Know all men by these presents, executed and delivered on the ——— day of ———, eighteen hundred and ——, that I,———, of the county of ——— and State ——— (merchant), for the consideration hereinafter stated, to be paid by ———, of the county of——— and State ——— (farmer), have bound myself, my heirs, executors and administrators, and do hereby firmly bind myself, my heirs, etc., to execute and deliver, duly witnessed by two or more credible witnesses, and acknowledged or proven and certified (at my cost) for registration, unto said ———, his heirs and assigns, my deed to him

conveying all that certain tract of land situate in the county of —— and State of Texas, which is more particularly described as follows: [Here insert the field notes, with any recitals that may be agreed upon], which deed is to contain the following covenant or covenants [Here insert any one or more of the covenants, the forms of which are given or which are suggested *supra*, § 14, d-r].

Now the condition of the above obligation is such, that whereas the said ——— has made and delivered unto me his (here insert the number) certain promissory notes of even date herewith, for the sum of ——— dollars ($——) each, bearing interest at the rate of ——— per cent. per annum from date until paid, and payable at [here insert the place] the one being payable on the ——— day of ———, 18—, and the [here insert when the other or each of the others is payable]. Now, if the said ——— shall well and truly pay, or cause to be paid, each of said notes with the interest therein stipulated at the time and place specified [here insert, if it be so agreed—"time being of the essence of this contract"], then and in that event the above obligation is to be in full force, otherwise it is to be *ipso facto* void and of none effect, and the said ——— is to forfeit to me any payment or payments he may have made. But in case the said ——— shall make each and all of the payments, with interest as stipulated in said notes, and I on my part should fail to execute, deliver, etc., my deed as I am above obligated to do, then and in that event I hereby agree to pay to him, or to his heirs, etc., [here insert the sum agreed upon; for example, double the amount of said notes, with interest], as liquidated damages, and not as a penalty, at the time and place above stated. To all which I bind myself, my heirs, etc. In witness whereof I have hereunto set my hand and seal, this ——— day of ———, 18—, as is above written.

Signed, sealed and delivered, in presence of the undersigned, each of whom is also witness to the signature of the other(s), and signs as witness at the request of the obligor.

——— ——— [L. S.]

——— ———
——— ———
——— ———

(*f*.) In order to avoid risk, the seller can, at the same time, execute and deliver, *as an escrow to take effect on the completion of the payments*, such a deed as he has obligated himself to make. In case he does so the attestation clause of the deed should recite that it (the deed) is "signed, sealed and delivered as an escrow, to take effect on the completion of the payments, in presence of the undersigned, each of whom", etc.

(*g*.) It can then be deposited (with or without the notes) with the person at whose office or counting room the notes are made payable.

(*h*.) A title bond, where a sale is made on a credit, shows the precise nature of the transaction, and when complied with by the payment of the purchase money and the execution and delivery of the deed, as stipulated, the whole transaction is evidenced by the deed.

(*i*.) When a deed is made in the first instance, and a mortgage or deed of trust is also then executed to secure the payment of the purchase money, when it is paid a third instrument has to be executed, delivered and recorded, in order to show a clear title of record. Three instruments have to be prepared and recorded, while two would be sufficient. In a suit, a deed executed in pursuance of a title bond can be read in evidence alone, without the title bond. But where a mortgage or deed of trust is executed, when the deed is offered in evidence the opposing party can offer the mortgage, or deed of trust, and thus compel the production of the third instrument—the release. Three instruments might have to be offered in evidence where one would of itself prove what is required.

(*j*.) As the title is held not to pass until the consideration is paid (see *supra*, § 8, u, and § 11, f, k), it is not perceived why sales of land on credit should be evidenced by an apparently absolute deed, a mortgage or deed of trust, and a release, when the more simple and business-like mode of a title bond and a deed answers the purpose of the parties better and at less cost.

(*k*.) A title bond duly recorded is notice to all subsequent purchasers.—*Allen* v. *Root*, 39 Texas, 589.

(*l*.) In States where the distinctive jurisdictions of law and equity are maintained, a deed retaining a lien to secure the payment of the purchase money would be treated as a mere title bond, and could not be used in evidence in an action of ejectment for the purpose of showing title in the vendee.—*Caldwell* v. *Fraim*, 32 Texas, 310.

But query as to this?—ED.

(*m*.) A recital in a title bond of the payment of a certain consideration

is not conclusive, but, at most, only *prima facie* evidence, either of the true amount of the consideration, or of the fact that it was paid.—*Eborn* v. *Cannon*, 32 Texas, 231.

But is it not conclusive until impeached? (See § 11, b, h and l.)—ED.

(*n*.) Bond, the meaning of, prior to the adoption of the common law, defined.—*Foster* v. *Champlin*, 29 Texas, 22.

(*o*.) It is one of the fundamental rules of evidence that all private writings must be proved to be genuine before they can be admitted as evidence. One of the exceptions to this rule is where a deed is thirty years old, in which case it is presumed that proof of its execution by subscribing witnesses or otherwise is out of reach, and the deed is said to prove itself. The principle underlying this exception seems applicable to *all ancient writings* which might be evidence of present rights.—*Stroud* v. *Springfield*, 28 Texas, 649.

(*p*.) Where the execution of a title bond was not denied under oath, it was held fully proved according to the rules of the common law, and such proof dispensed with the registration and notice required by the ninetieth section of an Act to regulate proceedings in the district court. (P. D., Art. 1443, note 549, and Art. 3716, note 840.)—*Yeary* v. *Cummings*, 28 Texas, 91.

(*q*.) The primary object of a title bond for land is to secure the title; it becomes an obligation for money only upon a breach of its conditions, in consequence of which the obligee becomes entitled to damages.—*Bullion* v. *Campbell*, 27 Texas, 653.

(*r*.) Where a title bond for land purported to be made in consideration of "one dollar" and of "kindness to me as a stranger;" *held*, doubtful whether the instrument expressed on its face a valuable consideration.—*Davis* v. *Turner*, 26 Texas, 98.

(*s*.) Most generally a contract for the sale of land, though evidenced by several instruments, as a bond for title on one side and notes on the other, is understood to be an entire contract. When so treated, it becomes analogous to a memorandum or articles of agreement for the sale of land, which is usually signed by both parties, each party taking a duplicate original—the usual mode of contracting for the sale of land in England.—*Scarborough* v. *Arrant*, 25 Texas, 129.

(*t*.) When the vendee has taken a bond for title which does not show that the purchase money has been paid, upon proof that he paid it, his title becomes absolute, and he and those claiming under him can recover the land from his vendor, or a subsequent vendee, in an action of trespass to try title; and is not put to his action for specific performance.—*Secrest* v. *Jones*, 21 Texas, 121.

See Texas Digest, "Title Bonds," 550, 1 to 11.

OF LEASES.

§ 31. (*a*.) A lease is a contract for the possession of lands, tenements or hereditaments. To be binding there must be some land, tenement, or a part thereof, or hereditament (real, not personal) to be leased; there must be a lessor and lessee, and there must (as in case of all contracts) be a consideration.

(*b*.) A lease may be at will, in which case it may be terminated at any time at the will of either of the parties, or it may be for a specified time.

(*c*.) If for a year, or less, it need not be in writing, but may be verbal.

"No action shall be brought * * * * * upon any contract for the sale of lands, * * * * tenements or hereditaments, or the making any lease thereof for a longer term than one year * * *. * unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the parties to be charged therewith, or some person by him thereunto lawfully authorized."

(See *supra*, § 2. a.)

The Act concerning conveyances, which took effect on the same day with the Statute of Frauds, from which the preceding paragraph is copied, provides as follows:

"That no estate of inheritance or freehold, or for a term of more than five years, in lands and tenements, shall be conveyed from one to another, unless the conveyance be declared by writing, sealed and delivered."

(See *supra*, p. 4, § 3, a.)

(*d*.) From the above extracts it appears that a lease "for a longer term than one year" must be in writing, *or it cannot be actionable;* and that if it be "for a term of more than five years" the lands or tenements, or both, included in it *cannot thereby be "conveyed from one to another* unless the conveyance" (i. e. lease) "be declared by writing, sealed and delivered."

(*e*.) A lease may be drawn so as to be signed by both parties, as

an indenture, or by one (the lessor), as a deed poll. The former form is, perhaps, the more convenient.

(*f*.) "The words 'demise, grant (or set) and to farm let' are technical words well understood, and are the most proper that can be used in making a lease; but whatever words are sufficient to explain the intent of the parties, that the one shall divest himself of the possession and the other come into it for such determinate time, whether they run in the form of a license, covenant or agreement, are of themselves sufficient, and will in construction of law amount to a lease for years as effectually as if the most proper and pertinent words had been made use of for that purpose." (Bouvier's Law Dic., "Deeds."

(*g*.) It is the safer practice to have a lease prepared, executed, authenticated and recorded with all the formalities used in preparing, etc., a deed conveying the absolute title to land.

No form of a lease is given in any statute of Texas, but the following form, which is intended to be executed by both parties (in duplicate, each to be delivered an original), is deemed sufficient, and is preferable, as it shows the entire contract—not merely a part, as would be the case were it executed by the lessor (or landlord) alone:

Form of Lease.

(*h*.) The State of Texas, County of ———

This indenture, made on the —— day of ———, eighteen hundred and ——, by and between ——— of ———, and ——— of ——— witnesseth, that the said ———, in consideration of the (yearly) rent and covenants hereinafter mentioned and reserved, on the part and behalf of said ———, his executors, administrators and assigns, to be paid, kept and performed, hath demised, set and to farm let, and by these presents doth demise, set and to farm let, unto said ———, his executors, administrators and assigns, all that certain [here describe the tract of land or house and lot, stating the county and State in which it is situated.]

To have and to hold the same, and all and singular the premises hereby demised, with the appurtenances, unto the said ———, his executors, administrators and assigns, from the —— day of ——— next ensuing the date hereof for and during the term of ——— thence next ensuing, and fully to be complete and ended, yielding

and paying for the same unto the said ———, his executors, administrators and assigns, the (yearly) rent of —— at ———.

And the said ———, for himself, his heirs, executors and administrators, doth covenant, promise and agree, to and with the said ———, his heirs, executors, administrators and assigns, as follows: that he, or some of them, shall well and truly pay, or cause to be paid, the rent above reserved at the time(s) and place(s) hereinbefore mentioned specified for the payment thereof, according to the true intent and meaning of these presents, a lien being hereby given on ———— to further secure the payment thereof, and to deliver possession of the premises leased at the expiration of said term, in as good order, ordinary wear and tear only excepted, as they are at present.

And the said ———, for himself, his heirs, etc., doth covenant to and with the said ———, his executors, administrators and assigns (paying the rent and performing the covenants herein set forth), that he and they shall and lawfully may peaceably and quietly have, hold, use, occupy, possess and enjoy the said demised premises, with the appurtenances, during the term aforesaid, without the lawful let, suit, trouble, eviction, molestation or interruption of the said ———, his heirs or assigns, or any other person or persons whomsoever.

In witness whereof, we have hereunto set our hands and affixed our seals on the date above written, in duplicate.

Signed, sealed and delivered in presence of the undersigned, each of whom is also witness to the signature of the other(s), and signs as witness at the request of the makers.

——— ——— [L. S.]
——— ——— [L. S.]

——— ———
——— ———
——— ———

The above form may be modified so as to be a lease executed by the lessor alone, the obligation of the lessee to be evidenced by his note or other separate contract.

(*i*.) A lease of a house, or of a room only, especially if in a town

or city, ought, in most cases, to contain additional covenants for the protection of the lessor, or landlord. For example, where the lessee's character is not well known, it may be but prudent to have covenants inserted that he will carry on or permit upon the premises no pursuit or occupation contrary to law (or that may be specified); that he will not sublet; that he will do or suffer nothing to be done thereon that will increase the fire risk (or that will increase or vitiate the insurance if the property is insured); and that he will not change or remove or add to the fixtures, the whitewash, paint and plastering included, on the premises, without the written and signed consent of the lessor previously obtained.

(*j*.) The covenants in a lease, and each of them, may also be fortified by an additional one stipulating that the party committing a breach (of each) shall pay a specified sum for such breach as liquidated damages and not as a penalty.

(*k*.) The parties may well agree to this as to each of their reciprocal covenants, rather than to leave the damages to be assessed upon verbal proof, which is not only apt to be indefinite, but is in all cases more or less expensive to adduce.

A few judicious and well considered covenants in a lease (as in a deed) may prevent litigation, or, at least, render it comparatively prompt, certain and free of needless costs.

Parties about to contract are generally willing to have such mutual covenants as may be protective of their respective interests inserted in the lease, and when they are inserted, are more apt to respect them than if they were not.*

(*l*.) It may here be remarked that "An Act to provide a summary remedy to enable landlords or lessors to obtain possession of lands or tenements unlawfully detained or withheld by tenants," of February 5, 1840, 174; P. D., 647, Arts. 1759–1768, does not appear to have been repealed by "An Act to regulate proceedings in case of forcible entry and detainer," of March 15, 1848, 102; P. D., 646–648, Arts. 3869–3872.

The former Act is to provide *a summary remedy* against "any tenant or tenants for a term of life or lives, year or years, or other person or persons," etc., who "shall unlawfully hold over any lands, tenements or hereditaments, after the expiration of the term," etc.,

* As to the lien given by law to secure the payment of rents and advances in case of land, and authorizing "such contracts in regard to rents and allowances as they" (i. e. the landlord and tenant) "may think proper," see "An Act concerning rents and advances," of April 4, 1874, 55-59, Secs. 1 and 5; and "An Act to amend the fifth section of 'An Act concerning rents and advances,' approved April 4, 1874," of August 14, 1876, 137, Sec. 2.—ED.

while the latter is framed *to regulate proceedings* in enforcing that remedy, and contains no repealing clause.*

(*m*.) The language of the former Act "for a term of life or lives, year or years," indicates that what are known as "ground rent" deeds are permissible in this State. "In Pennsylvania this term (i. e. ground rent) is used to signify a perpetual rent issuing out of some real estate. This rent is redeemable where there is a covenant in the deed that, before the expiration of a period therein named, it may be redeemed by the payment of a certain sum of money; or it is irredeemable when there is no such agreement; and in the latter case it cannot be redeemed without the consent of both parties."—(Bouvier's Law Dic., "Ground Rent.")

The ground rent deed (or lease, for it partakes of the nature of both) begins as an ordinary deed conveying the fee simple title, and after reciting that it is for a consideration (generally a large one), payable at an early day specified, contains a covenant that if it is not then paid it shall never be paid, but that instead thereof an annual ground rent (generally a very moderate sum) shall be paid, and contains other covenants that may be agreed upon by the parties.

As ground rents run for long terms, and are considered very safe investments when on valuable town or city property where the lots are either already improved, or are sure to be improved, it is not improbable that they may be in use in the more important cities of Texas as soon as capital so accumulates in them as to seek moderate but certain and permanent investments.

OF AGREEMENTS AFFECTING THE TITLE TO OR USE OF LAND.

§ 32. (*a*.) "Every conveyance, covenent, *agreement*, deed, deed of trust or mortgage, in this Act mentioned, which shall be acknowledged, proved or certified according to law, and delivered to the clerk of the proper court to be

* "An Act to organize the courts of justices of the peace and county courts, and to define their jurisdiction and duties," of August 13, 1870, 97-112, section 2 of which relates to forcible entry and detainer, also contains no repealing clause. "An Act to provide for the election of justices of the peace, and to define their powers and jurisdiction," of August 17, 1876, 154-168, the fourth section of which relates to forcible entry and detainer, declares in its forty-second section "That all laws and parts of laws in conflict with this Act, or any of its provisions, be and the same are hereby repealed;" but nothing in its fourth section conflicts with the words "any tenant or tenants for a term of life or lives, year or years," etc., indicating the extent of the term permissible, of the Act of February 5, 1840, 174, Sec. 1.—ED.

recorded, shall take effect and be valid as to all subsequent purchasers for a valuable consideration, without notice, and as to all creditors, from the time when such instrument shall be so acknowledged, proved, or certified and delivered to such clerk to be recorded, and from that time only."

("An Act concerning conveyances," of February 5, 1840, 153, Sec. 13. P. D., 837, Art. 4994. See *supra*, § 3, m.

(*b*.) The Supreme Court of Texas has declared that a memorandum or articles of agreement, which is usually signed by both parties, each party taking a duplicate original, is the usual mode of contracting for the sale of land in England. (See Scarborough v. Arrant, 25 Texas, 129.)

The following is a form of what is styled a Memorandum of Agreement or Articles of Agreement, such as is contemplated by the above decision:

Articles of Agreement.

(*c*.) Articles of agreement made by and between A. B,, of ———, merchant, and C. D., of ———, farmer, as follows, to wit: The said A. B., for the consideration hereinafter mentioned, does hereby covenant, promise and agree with the said C. D., by these presents, that he, the said A. B., shall and will on or before the —— day of ——— next ensuing the date hereof, at the proper cost and charges of the said [either], by a good, lawful, duly witnessed and acknowledged deed, well and sufficiently grant, convey and assure unto the said C. D., his heirs and assigns in fee simple, the following tract of land situate in the county of ——— and State of Texas, which is more particularly described as follows: [Here insert the description.]

Said deed is to contain the following covenants, to wit: [For example, a covenant that the grantor had good fee simple title, that he has actual possession of said tract, that it is free of all incumbrances, taxes included, and a covenant of general warranty—in a word, any or all of the covenants given or suggested *supra*, in § 14, a–r.]

In consideration whereof the said C. D. does covenant, promise and agree with the said A. B., by these presents, that he the said C. D. shall and will, on the execution, delivery and acknowledgment of

said deed as aforesaid, well and truly pay or cause to be paid ——— dollars ($——). And for the true performance of all and every the covenants and agreements at the office of ———, in said county, we and each of us do hereby bind ourselves, our heirs, executors and administrators in the sum of ——— as liquidated damages and not as a penalty. In witness whereof we have hereunto set our hands ["and affixed our seals" had better also be inserted, and seals or scrolls affixed accordingly] this ——— day of ———, eighteen hundred and ———, in duplicate.

Executed and delivered in duplicate in presence of the undersigned, each of whom is also witness to the signature of the other(s), and signs as witness at the request of the parties hereto.

——— [L. S.]
——— [L. S.]

——— ———
——— ———
——— ———

(*d.*) There is an endless variety of agreements affecting the title to or use of land, permitted by the Constitution and laws of Texas, but in the compass of this brief compilation it is not convenient to supply any other than the above form.

For example, if in a lease of land the lessor reserves the right to authorize, by agreement, the pasturage of a specified number of cattle, sheep, or horses, or to cut timber in the enclosure, he may make an agreement (duly executed, etc.) with a third party to pasture, or to cut timber, accordingly.

(*e.*) There seems to be nothing in the laws of Texas that precludes a party owning or having an interest in personal property from making a *bona fide* agreement touching such personal property, which, if duly executed and recorded in the county where such personal property is, will be constructive notice.

(*f.*) Agreements are actionable, if in writing and signed by the parties, and are registrable, but like all other written contracts, are the better for being sealed, because, as has been stated, if sealed they cannot be attacked unless an affidavit impeaching their consideration, or their execution, or both, is filed. (*Supra*, § 16, d.)

OF DEEDS OF TRUST.

§ 33. (*a.*) "All *deeds of trust* and mortgages whatsoever which shall hereafter be made and executed" (§ 3, d) are required by law to be recorded, in order that they may have effect as constructive notice. (See § 6, d.)

(*b.*) What is generally understood by a deed of trust, in Texas, is a conveyance of land, or personal property, or both, to a trustee to secure the payment of a debt due, or to become due, to a third party. It has been held by the courts of this State to be only equivalent to a mortgage with a power to sell.

(*c.*) The intention of the parties who made their contract a deed of trust, instead of a mortgage with a power to sell, or a simple mortgage, was mainly to secure the payment of a debt without the necessity of the delay and expense of an order of court in case of the death of the grantor or mortgagor, as well as in the event that he continued alive. They believed that under our law they could make a power which would be held here, as it has been elsewhere, because coupled with an interest, irrevocable by death.

(*d.*) The Supreme Court of Texas, while admitting that "on general principles, the death of the mortgagor (or maker) would not operate a revocation of the power," submits the question, whether the statute governing the settlement of the estates of decedents will cause it to have that effect? and answers, "we are of the opinion that it will." (See *the language* of the cases cited, *infra*, r.) Under these rulings, what is termed a deed of trust, and is agreed upon between the parties to be the contract they intended to make instead of a mortgage with, or without, a power to sell, operates to carry out their intention only in case the maker continues alive. In the event of his death, the delay and expense of an order of court, which they, by the *implied* terms of their contract, sought to avoid, is made inevitable.

Whether a deed of trust reciting *in express terms* that it is made instead of a mortgage with, or without, a power to sell, in order to avoid the unnecessary delay and expense of an order of court, and is guarded by a covenant for liquidated damages, would be held sufficient to give effect to the declared intent of the parties contracting has not yet been decided. It is not perceived that a contract which is lawful if the parties are living or dead cannot be enforced as they stipulated in case either of them dies, when it contains a covenant *expressly* providing that it shall be enforceable in case of the death of the maker in the same manner as if he remained alive.

If the intent of the parties in making a lawful contract is frustrated by what Jeremy Bentham styles "judge-made law," a remedy can certainly be provided by the Legislature.

A convenient form of a deed of trust is here inserted.

Form of Deed of Trust.

(*e*) The State of Texas, County of ———.

Know all men by these presents, etc. [as in case of a deed conveying the absolute fee simple title to land until the end of the clause of warranty. Then insert as follows:]

In trust, nevertheless, for inasmuch as I am indebted to ——— in the sum of ———, payable at ——— on the —— day of ———, with interest thereon at the rate of ——— from (date) until paid, now in case the said sum, with interest as stipulated, is paid when the same becomes due, then and in that event this instrument is to become void and of none effect; but in case said sum, with interest, or any part thereof, is not paid when the same become due, then and in that event the said (trustee), or in case of his neglect or failure from any cause to act, ——— of ——— as his substitute, and in case of his neglect or failure from any cause to act, the sheriff for the time being of ———, or any one of his deputies as his substitute, shall proceed to advertise and sell and distribute the proceeds, as in case of a sale under execution, the aforedescribed ———, and shall convey the same to the purchaser or purchasers thereof, the trustee or his substitute first deducting the costs and commission allowed by law to sheriffs for advertising and selling under execution, as compensation for his services as trustee.

(*f*.) I do hereby covenant, for myself, my heirs, executors and administrators, that inasmuch as this instrument has been made a deed of trust instead of a mortgage with or without a power to sell, in order that it may be enforced without the necessity of any order of any court, whether I be living or dead, at the time it stipulates that it shall be enforceable, and that the unnecessary delay and expense of any such order may be avoided—in the sum of —— dollars as liquidated damages and not as penalty—that no other action shall be had in the county court in case of my death touching the property embraced in this deed of trust than to receive and cause to be

returned in the inventory of my estate the interest, if any there be, therein that may belong to my estate under this trust.*

(*g*.) And I do hereby further covenant, for myself, my heirs, executors and administrators, that in case any order of sale is obtained, caused or suffered to be obtained, by them, or any of them, of the property embraced in this deed of trust, then and in that event I or they shall pay unto the said ———, his heirs or assigns, the sum of ——— dollars as liquidated damages and not as penalty.

(*h*.) I do hereby, for myself, my heirs, etc., further covenant that in case the trust hereby created be not enforced within four years from and after the date upon which the debt hereby secured becomes due, then and in that event the incumbrance hereby created shall cease and be forever discharged, and the ——— herein described shall become and be as free and clear thereof as if this deed of trust had never been made.

In witness whereof I have hereunto set my hand and affixed my seal, this —— day of ———, eighteen hundred and ———.

Signed, sealed and delivered, in presence of the undersigned, each of whom is also witness to the signature of the other(s), and signs as witness at the request of the maker.

——— [L. S.]

——— ———

——— ———

——— ———

(*i*.) The forms of covenants above, marked f, g and h, are given in order that they may be inserted or omitted at the option of the parties. If the forms f and g should be held sufficient, deeds of trust containing them will be enforceable without delay and expense in case the makers should die.

(*j*.) The covenant marked *h* is given in order that where a formal satisfaction or release of the trust may not be entered of record, the property may become clear of record on the expiration of four years.

* If a party can by will keep the whole of his estate out of court (see Gen. Laws of 1876, 126, Ch. 84, Sec. 123) can he not by contract keep a part of his estate out of court, when by so doing the estate is benefitted?—ED.

(*k.*) It may be here remarked that deeds of trust, in the more extended sense of the term, by which property, real or personal, or both, is vested in a trustee or trustees, there to remain for the use of some person or corporation, are so little in use that a form of such instruments is not inserted in this work.

(*l.*) The record of a trust deed affected all subsequent purchasers with notice of its terms.—*Merriman* v. *Russell*, 39 Texas, 278

(*m.*) A deed of trust executed by the husband and wife to secure a debt due from the husband, is such a conveyance of an interest in the land as is contemplated by an act defining the mode of conveying property in which the wife has an interest.—*Jordan* v. *Park*, 38 Texas, 429.

(*n.*) A sale by a trustee under such a deed of trust is not a forced sale in contemplation of law.—*Id.*

But query as to this? See Constitution of 1876, Art. 14, Sec. 50.

(*o.*) Where a deed of trust did extend the time of payment of a joint note, it furnished no defense to one of the parties who held himself out as principal, though he may have been but a surety as between himself and his co-maker.—*Roberts* v. *Boone*, 32 Texas, 385.

(*p.*) Where a trustee advertises for a less time than he is required to do by the deed of trust, and sells, the sale is void.—*Young* v. *Van Benthuysen*, 30 Texas, 762.

(*q.*) Most generally a contract for the sale of land, though evidenced by several instruments, as a bond for title on one side and notes of hand on the other, is understood to be intended as one entire contract. When so treated, it becomes analogous to a memorandum, or articles of agreement for the sale of land, which is usually signed by both parties, each party taking a duplicate original—the usual mode of contracting for the sale of land in England.—*Scarborough* v. *Arrant*, 25 Texas, 129.

(*r.*) A power to sell contained in a mortgage or deed of trust given to secure the payment of a debt, although not revoked, on general principles, by the death of the constituent, is inconsistent with our statutes respecting the settlement of estates of deceased persons, and therefore cannot be executed after the death of the constituent.—*Robertson* v. *Paul*, 16 Texas, 472.

See also Reeves v. Petty, 44 Texas, 252. Judge Moore dissenting.

(*s.*) A trust in lands can not be proved by the testimony of a single witness swearing to the verbal declarations of the alleged trustee, unless there be strong corroborating circumstances.—*Hall* v. *Layton*, 16 Texas, 262.

(*t.*) The mere use of a person's name as trustee is not sufficient to raise an implied promise on the part of the beneficiary to pay him a sum of money as commissions, not otherwise.—*Catlin* v. *Glover*, 4 Texas, 151.

(*u.*) The conditions and solemnities annexed to the execution of a power, must be strictly complied with, however unessential they might otherwise have been. Their observance is indispensable, and admits of no equivalent or substitution.—*Crosby* v. *Houston*, 1 Texas, 203.

(*v*) Parol testimony is admissible to prove that a deed or instrument, absolute on its face, was executed and delivered upon certain trusts not reduced to writing, and which the grantee promised to perform.—*McClenny* v. *Floyd*, 10 Texas, 159.

(*w.*) The doctrine of implied trusts is applicable to a deed obtained fraudulently and without consideration.—*Id.*

(*x.*) Trusts are not included in our statute of frauds, and may therefore be proved, as at common law, by parol.—*Miller* v. *Thatcher*, 9 Texas, 482.

(*y.*) *It seems* that the testimony of a single witness, swearing to the admissions of an alleged trustee, is insufficient to establish a trust in lands, although the alleged trustee be living, and his answer, denying the trust, be not under oath.—*Id.*

(*z.*) Where one receives a conveyance of property in trust to reimburse himself and another for money paid, and a suit is brought to enforce the trust, on the part of the second *cestui que trust*, a decree may be prayed for and made to the effect that the trustee pay to the plaintiff the amount intended to be secured, by a certain day, and in case of his failure to do so, then that the property be sold, etc.—*Id.*

(*aa.*) Where a deed of trust and mortgage provided that the trustee should proceed to sell, in a certain event, upon request of certain beneficiaries in writing, it was *held*, that although it was admitted that the trustee could not have proceeded to sell, if the property had remained where the trust deed had left it (in Alabama), yet where he was prevented by the acts of the defendant (running the property off to Texas,) from executing the trust in the specific manner pointed out in it, and had to resort to a suit to foreclose the mortgage, it could be enforced by the direction and according to the rules of the forum to which the trustee had been compelled to resort to secure the trust reposed in him.—*Gaines* v. *Davenport*, 8 Texas, 451.

(*bb.*) A trustee in a deed of trust made in another State may follow the trust property to this State and enforce the trust by suit, without making the *cestui que trusts* parties.—*Id.*

(*cc.*) Parol evidence is admissible to prove that a deed or instrument, absolute on its face, was executed and delivered upon certain trusts, not reduced to writing, and which the grantee promised to perform; and the same may be established.—*Mead* v. *Randolph*, 8 Texas, 191.

(*dd.*) Upon the same principle or basis is founded the rule which enjoins the specific performance of any promise by which another is prevented from performing an intended act, or through which he omits to make certain arrangements, provisions or gifts, by will or otherwise, for other persons.—*Id*

(*ee.*) The only contract in relation to lands which is required by our statute of frauds and fraudulent conveyances to be in writing, is the contract for their sale; express trusts in relation to lands stand upon the same policy with implied or constructive trusts; the facts from which resulting trusts arise, and the special contracts by which express trusts are created, may alike be proved by parol evidence.—*Id.*

(*ff.*) The rules in relation to the proof of implied or constructive trusts might doubtless be applied advantageously to the proof of express parol trusts; it must be clear and satisfactory, and such as is reasonably attainable under the circumstances of the case.—*Id.*

(*gg*) When a principal invests his agent with a general power, or with the absolute estate, with a parol or separate understanding or agreement that the authority is to be exercised or the estate to be conveyed for a particular purpose only, the principal will be bound, as a general rule, by the acts of the agent in fraud of the parol or separate understanding or agreement; the exception being in case of notice, etc.—*Grenaux* v. *Wheeler*, 6 Texas, 515.

(*hh.*) Where the owner of property makes a conveyance absolute in form, with a parol trust annexed, a subsequent purchaser from the donee without notice of the trust would not be affected by it.—*Davis* v. *Loftin*, 6 Texas, 489.

(*ii.*) Parol testimony of the declarations of a person since deceased, in whom was the legal title to land in controversy, is incompetent to prove the equitable title to be in another.—*Neill* v. *Keese*, 5 Texas, 23.

(*jj.*) Where the consideration money is paid by one, and the deed taken in the name of another, a resulting trust arises in favor of the former, and the latter must hold the thing purchased for his use and benefit.—*Tarpley* v. *Poage's administrator*, 2 Texas, 139.

(*kk.*) Statutes of limitations are adopted in chancery by way of analogy, but under such rules and restrictions as are deemed compatible with equity, and hence in transactions of express trust—in such as originated in fraud, and much more in those growing out of oppression—the bar is not allowed to intervene.—*Hall* v. *Phelps*, Dallam, 435.

(*ll.*) A suit in a fiduciary capacity for an injury done to the trust estate precludes the same party from instituting another suit in a different capacity for the same injury.—*Bailey* v. *Hadly*, Dallam, 376.

MORTGAGES OF LAND.

§ 34. (*a.*) "All mortgages on real estate shall, upon the usual proof, be recorded in the county where the land is situated, within ninety days from the passage of this act, or from the date of the execution of such mortgage; and

upon personal property in the county where the mortgagor lives. No mortgage shall take lien upon property unless so recorded."

("An Act to provide for the foreclosing of mortgages on real and personal estates," of May 15, 1833, 135, Sec. 3. H. D. 834, Art. 2759. O. & W. D., 381, Art. 1723. P. D. 835, Art. 4985.)

(*b.*) "All mortgages shall be recorded as heretofore, but the lien created by the making of the mortgage shall not be lost or destroyed, as between the parties to it, if the mortgagee should fail to have it recorded within the time prescribed by law."

("An Act to amend an Act for the foreclosing of mortgages on real and personal estate, approved May 15, 1838," approved February 5, 1840, 70, Sec. 3. H. D., 835, Art. 2762. O. & W. D., 331, Art. 1725. P. D., 835, Art. 4986.)

(*c.*) "All bargains, sales, and other conveyances whatever, of any lands, tenements and hereditaments, whether they be made for passing any estate of freehold or inheritance, or for a term of years; and deeds of settlement upon marriage, whether land, slaves, money, or other personal thing shall be settled or covenanted to be left, or paid, at the death of the party, or otherwise; and all deeds of trust and mortgages whatsoever, which shall hereafter be made and executed, shall be void as to all creditors and subsequent purchases for valuable consideration without notice, unless they shall be acknowledged or proved and lodged with the clerk, to be recorded according to the directions of this act, but the same as between the parties and their heirs; and, as to all subsequent purchasers, with notice thereof, or without valuable consideration, shall nevertheless be valid and binding."

("An Act concerning conveyances," of February 5, 1840, 154, Sec. 4. H. D., 835. Art. 2767. O. & W. D., 331, Art. 1726. P. D., 836, Art. 4988. § 3, d.)

(*d.*) "Every conveyance, covenant, agreement, deed,

deed of trust or *mortgage*, in this Act mentioned, which shall be acknowledged, proved or certified according to law, and delivered to the clerk of the proper court to be recorded, shall take effect and be valid as to all subsequent purchasers for a valuable consideration, without notice, and as to all creditors, from the time when such instrument shall be so acknowledged, proved, or certified and delivered to such clerk to be recorded, and from that time only."

("An Act concerning conveyances," of February 5, 1840, 153, Sec. 13. P. D., 837, Art. 4994. See *supra*, § 3, m.)

(*e.*) "It shall be the duty of each recorder to record, in the books provided for his office, all deeds, mortgages, * * * * * which shall be proved or acknowledged according to law and delivered to him to be recorded in his office."

("An Act to provide for the registry of deeds and other instruments of writing," of May 12, 1846, 239, Sec. 4. H. D. 841, Art. 2787. P. D., 838, Art. 5004.)

(*f.*) In regard to mortgages with a power to sell see *supra*, § 33.

(*g.*) As a mere mortgage cannot be enforced without an order of court, mortgages are so seldom used in this State (being substituted by deeds of trust, or by mortgages with a power to sell), that it is deemed unnecessary that a form of mortgage should be here inserted.

(*h.*) Growing crops may be mortgaged. Cotton planted is subject to mortgage regardless of its growth towards maturity.—*Cook* v. *Steele*, 42 Texas, 53.

(*i.*) The rights conferred by a mortgage cease when the debt secured is barred.—*Ross* v. *Mitchell*, 28 Texas, 150.

(*j.*) A mortgage is treated in equity so completely as the incident to the debt, that the payment of it extinguishes the mortgage without a release from the mortgagee.—*Perkins* v. *Sterne*, 23 Texas, 561.

(*k.*) The assignment of the debt, even by parol, or the delivery of a note payable to bearer, secured by mortgage, draws after it the mortgage as appurtenant to the debt.—*Id.*

(*l.*) Though the creditor has no remedy on his mortgage after his debt is barred by limitation, a new promise by which a debt barred by the

statute is revived, will also operate to revive the mortgage, though there be no words to that effect in the new promise.—*Id.*

(*m.*) It is the duty of the assignee of a mortgage upon land to make his assignment a matter of record.—*Henderson* v. *Pilgrim*, 22 Texas, 464.

(*n*) Where a suit is brought to foreclose a mortgage but there is no order of sale, or judgment of foreclosure, a *bona fide* purchaser subsequent to such judgment as has been rendered (i. e. one not of foreclosure) takes exempt from mortgage.—*Johnson* v. *Murphy*, 17 Texas, 216.

(*o.*) A power to sell contained in a mortgage or deed of trust given to secure the payment of a debt, although not revoked on general principles by the death of the constituent, is inconsistent with our statutes respecting the settlement of estates of deceased persons, and therefore cannot be executed after the death of the constituent.—*Robertson* v. *Paul*, 16 Texas, 472. [But query as to this?—ED.]

See also Reeves v. Petty, 44 Texas, 252. Judge Moore dissenting.

(*p.*) Where a debt secured by a mortgage is barred the mortgage cannot be foreclosed.—*Duty* v. *Graham*, 12 Texas, 427.

(*q.*) It is competent to prove by extrinsic evidence that a deed which is in the form of an absolute or conditional sale was in fact intended to secure subsisting indebtedness, and was therefore a mortgage.—*Fowler* v. *Stonum*, 11 Texas, 478.

(*r.*) An absolute bill of sale, and a bond to reconvey upon payment of a certain sum at a given day, otherwise the bond to be void, in the absence of some proof of a loan of money or forbearance, constitute a conditional sale.—*Thompson* v. *Chumney*, 8 Texas, 389.

(*s.*) See this case for an instrument which was held to be an executory contract of sale, and not a mortgage.—*Coles* v. *Perry*, 7 Texas, 109.

(*t.*) A deed, absolute on its face, will be valid and effectual as a mortgage, as between the parties, if it was intended by them to be merely a security for a debt. The character of the conveyance will be determined by the clear and certain intention of the parties; and parol evidence is admissible to show what their intention really was.—*Carter* v. *Carter*, 5 Texas, 83.

(*u.*) If the question of mortgage or not depends upon written instruments, it is for the court to decide; but if upon written and parol evidence, it is within the province of the jury.—*Id.*

(*v.*) Where a mortgage asserts a claim of absolute ownership in the property mortgaged, it is not necessary for the mortgagor to tender the amount acknowledged to be due on the mortgage, before commencing suit for the property.—*Watts* v. *Johnson and others*, 4 Texas, 311.

(*w.*) It matters not what may be the face of a conveyance, nor what the circumstances attending its execution, either the grantee or the grantor may allege that it was, in substance, a security for the loan of money; and

where that is alleged and parol evidence is introduced, it is a question of fact for the jury, whether it was, in substance, a loan of money; if a loan of money, then it is a mortgage, and the mortgagor may assert his right of redemption; or, the property being lost without default of the mortgagee, the latter may recover the money loaned, notwithstanding there was no personal covenant or promise to pay embraced in the form which the parties gave to the transaction.—*Stephens* v. *Sherrod*, 6 Texas, 294.

(*x*) The doctrine of mortgage discussed.—*Sampson & Keene* v. *Williamson*, 6 Texas, 102.

The propriety of adopting a simpler and less deceptive form of mortgage suggested.—*Id.*

(*y*.) A general power of alienation, not conferred for a special object or to effect a specific purpose, includes the power to mortgage.—*Id.*

(*z*.) A mortgage is a conditional transfer of property, which becomes absolute in law, if the condition be not performed.—*Luckett & Luckett* v. *Townsend & Moore*, 3 Texas, 119.

A mortgage is a pledge, and no more. It is an absolute pledge, *to become an absolute interest*, if not redeemed at a certain time. A pledge is a deposit *not to be taken back* but on the payment of a certain sum.—*Id.*

(*aa*.) In the case of a mortgage the *legal* property passes to the mortgagee, with a right of defeasance. The possession need not accompany the mortgage. In a pledge, the general property does not pass to the pawnee; he acquires only a right to *possession and use*. The possession must follow the pledge.—*Id.*

(*bb*.) If the circumstances show that a deed was given as a security for the payment of money, it will be treated as a mortgage, no matter what the terms may be in which it is written.—*Stampers* v. *Johnson*, 3 Texas, 1.

JUDGMENTS AND DECREES OF PARTITION OF LAND, OR BY WHICH THE TITLE TO LAND SHALL BE RECOVERED.

§ 35. (*a*.) "That hereafter every partition of any tract of land, or lot, made under any order or decree of any court, and every judgment or decree by which the title to any tract of land, or lot, shall be recovered, shall be duly recorded in the clerk's office of the county court of the county in which such tract of land, or lot, or part thereof, shall be; and until so recorded, such partition, judgment, or decree, shall not be received in evidence in support of any right claimed by virtue thereof."

(An Act concerning conveyances, of February 5, 1840, Sec. 8; § 3,

h; H D., 833, Art. 2771; O. & W. D., 381, Art. 1728; P. D., 836, Art. 4990.)

(*b.*) The Legislature, in 1860, after re-enacting the above in the precise words thereof (though without mentioning it, which renders it unnecessary that it should be here re-inserted,) proceeded to enact further:

—"It shall not be necessary in such cases to record the proceedings or the decree rendered in such cases in full, but a brief statement by the clerk of the court in which the same is made, under his hand and seal, setting forth the case in which the partition or decree was made, and the date thereof, and the names of the parties to the suit or partition, and the particular land or lot lying in the county in which the record is made, and the name of the party to whom the same is decreed, shall be deemed and held a sufficient record of such partition, judgment or decree."

(An Act supplementary to "An Act to provide for the registry of deeds and other instruments of writing," of February 9, 1860, 76, Sec. 4. P. D., 841, Art. 5023.)

(*c.*) As the latter of the above cited Acts (§ 35. b), after re-enacting the eighth section of the former (§ 35, a), without so much as referring to it, proceeds to make provision for what it rather indefinitely styles "a brief statement by the clerk," which seems to apply to decrees or judgments of partition only, it is certainly advisable, in order to avoid unnecessary risk, to have "every judgment or decree by which the title to any tract of land or lot shall be recovered" recorded in the county clerk's office of the organized county in which it (the land or lot) is situate. Indeed, it is safer to have the judgment or decree rendered in a case of partition so recorded, rather than to have a brief statement substituted therefor.

(*d*) Both Acts explicitly declare that "every partition," etc., "and every judgment or decree by which the title to any tract of land or lot shall be recovered shall be duly recorded" in the proper county, and that "until so recorded, such partition, judgment or decree *shall not be received in evidence* in support of *any* right claimed by virtue thereof," and no Act, in terms, permits "a brief statement" to be read in evidence.

JUDGMENTS—WHEN TO OPERATE AS LIENS ON LAND.

§ 36. (*a*.) Section 1. *Be it enacted by the Legislature of the State of Texas*, That whenever final judgments shall be rendered by any court of record of this State, such judgment shall be a lien on all the real estate of the judgment debtor situate in the county where the judgment is rendered, from the date of the judgment; and shall be a lien upon all the real estate of the judgment debtor situate in any other county in this State from the time when the transcript of such judgment shall be filed for record in such other county, as provided in the second section of this act; *provided*, that said lien shall cease and become inoperative if execution be not issued upon such judgment within one year from the first day upon which such execution can by law be issued thereon.*

(*Infra*, e, f, g, h, i, j, k, l, m, n, o.)

(*b*.) Sec. 2. Any person or persons who have heretofore, or who may hereafter, obtain a final judgment in a court of record, may obtain from the clerk of the court in which the same was rendered a transcript thereof, duly certified by the clerk, under the seal of the court, and may cause the same to be recorded in the office of the county clerk of any other county or counties in this State, in the book used for the registration of mortgages; and the county clerk shall make an alphabetical index of all transcripts so recorded by him, as in the case deeds and other instruments in writing required by law to be recorded.

(*c*.) Sec. 3. No judgment of a court of record shall become dormant unless ten years shall have elapsed between the issuance of executions thereon.

(*Infra*, p and q.)

* This section repealed section 12 of the Act of January 27, 1842, which is given as in force in Paschal's Digest, 3783. Section 1 of said Act was in force when the case of Sessums v. Botts, 34 Texas, 335, was decided, but section 12 of said Act was not.

(*d.*) Sec. 4. An Act to prevent judgments from becoming dormant, and to create and preserve judgment liens, approved February 14, 1850 [1860], and all acts and parts of Acts contravening the provisions of this Act, are hereby repealed; *provided, however*, that no lien upon land that has been created by judgment under any former law shall be affected, or the rights of the parties under such lien in any way impaired, by the repeal of such law. This act shall take effect and be in force from and after its passage.

(An Act to prevent judgment liens from becoming dormant, and to create and preserve judgment liens, of November 9, 1866, 118, 119, Secs. 1, 2, 3, 4. P. D., 1429, 1430, Arts. 7005, 7006, 7007, 7008.)

(*e.*) From and after the rising of every court, it shall be the duty of the clerk to tax the costs of suit in every case incurred by the successful party, and issue executions, indorsing thereon the several items contained in the bill of cost, in intelligible words and figures; *provided, however*, that after twenty days from the date of any final judgment rendered in any suit in the district court of any county where the term continues until the business is disposed of, or for a longer time than three weeks, and from the time of overruling motion for new trial or motion in arrest of judgment therein, and if no supersedeas bond for appeal or writ of error has been filed therein, execution may then be issued upon said judgment.

(Act of June 4, 1873, 209, Sec. 1. P. D., 617, Art. 3772.)

(*f.*) And we are inclined to the opinion that although there is no positive provision in the Act of 1842 providing, as the Act of 1840 did, that due diligence must be used to collect the execution, such is the common law.—*Russell* v. *McCampbell*, 29 Texas 39

(*g.*) Although a judgment lien may take effect at the rendition of the judgment, and continue one year without execution, yet if within one year the defendant should sell real estate within the county and no execution be sued out within the year, the lien is lost and the defendant's sale must hold.—*Id.*

(*h.*) We are also of the opinion that the lien of the judgment was not lost by the return of the execution after the levy, by the direction of the

attorney of the plaintiff in execution. Judgments of a court of record, unless they are permitted to become dormant, operated as liens, by the statute then in force, upon all the real estate of the defendant in execution within the county in which they were rendered. An execution was issued upon the judgment in question within less than a year from the time it was rendered, and regularly from term to term thereafter.—*Riddle* v. *Bush*, 27 Texas, 677.

(*i*) A plaintiff, by ordering or consenting to the return of his execution without a sale, might well be held to have lost the benefit of his levy in cases of conflicting liens. But the statute at the time of this sale gave the judgment, while living, the effect of a lien, and it would seem to follow as a necessary consequence that acts not done with a fraudulent intent, which do not affect its validity, could not be held to impair this statutory right.—*Id.*

(*j*) Under the Act of 1840 the lien given from the date of the judgment has two conditions annexed, the issuance of the execution within the time limited, and due diligence in collecting the same. The lien is given by the observance of the first, but it can only be retained by the latter. Would it be anything more than a reasonable construction of the term "due diligence," to say that after the return of the first execution not satisfied, the party would be required to try another writ, and to continue his efforts from term to term until he obtained satisfaction.—*Bennett and wife* v. *Gamble*, 1 Texas, 133.

See Paschal's Digest, 669, Article 3954, and note 936.

(*k*.) A judgment rendered in the Circuit Court of the United States operates as a lien upon all land situated within the district, whether the same be in the same county where the judgment was rendered or not.—*Branch* v. *Lowery*, 31 Texas, 193.

(*l*.) An appeal to the district court from a judgment rendered in the county court, as organized under the Constitution of 1866, did not vacate the lien of the judgment on lands of the defendant situate in the county where the judgment was rendered.—*Smith* v. *Kale*, 32 Texas, 290.

(*m*.) The supersedeas bond and appeal to the Supreme Court did not vacate his lien on the land owned by Robertson, within the county at the time of the rendition of the judgment.—*Thulemeyer* v. *Jones*, 37 Texas, 571.

(*n*.) Judgment liens attach to property acquired after they are rendered.—*Id.*

(*o*.) A judgment which had been rendered previous to the passage of the Act of November 9, 1866, operated a lien upon the defendant's real estate situate in the county where the judgment was rendered, by virtue of said statute.—*Moore* v. *Letchford*, 35 Texas, 185.

(*p*.) Where no execution has issued judgment does not become dormant for ten years from the time when execution could first have been issued—

nor until ten years have elapsed from the time of the issuance of the last execution properly issued.—*Scogin* v. *Perry*, 32 Texas, 30.

(*q.*) So much of Article 4603, Paschal's Digest, is repealed, as is inconsistent with the Act of November 9, 1866. (See *supra*, c and d.)

Lien of Judgments rendered in Justices' Courts.

(*r.*) Sec. 20. All judgments hereafter rendered by any justice of the peace shall operate as a lien upon all the real estate of the defendant situated in the county where such judgment shall have been rendered, whenever a certified copy of such judgment shall be filed for registration in the office of the clerk of the county court of such county; and it shall be the duty of such clerk to record certified copies of such judgments as may be filed with him for registration at the earliest practicable period, in the book used in said office for the record of mortgages, and to cause a regular and alphabetical index to be made of the names of the plaintiffs and defendants in said judgments, and also a reference to the page on which such judgment is recorded.

(Justices' Court Act of August 17, 1876, 163, Sec. 20.

Lien by Bond having the effect of a Judgment.

(*s.*) * * * Which bond (writ of error bond) shall have the force and effect of a judgment against all the obligors, upon which execution may issue in case of forfeiture.

(P. D., 836, Art. 1495. *Infra*, w.)

(*t.*) * * * *Provided*, that if the defendant do not replevy the property sequestered within ten days, if present in the county, in person, or by his agent or attorney, or within twenty days if absent from the county, the sheriff or other officer shall deliver the property to the plaintiff, upon his giving bond, payable to the sheriff or other officer, in a sum at least double the value of the property sequestered, with two or more good and sufficient sureties, to be approved by the officer, conditioned that the property shall

be forthcoming to abide the decision of the court, which bond, if forfeited, or if the suit be against the plaintiff, shall have the force and effect of a judgment.

(Act of November 9, 1836, 122, Sec. 7. P. D., 855*b*, Art. 5101*a*.)

(*u*.) * * * In all cases when any claimant of property under the provisions of this act, shall fail to establish his right thereto, and judgment shall be rendered against him, if he shall fail to return such property, in as good condition as when he received it, to the officer from whose possession he received it, or his successor, within ten days after the rendition of such judgment, such officer, or his successor, shall certify such failure to the court or justice by which such judgment was rendered; whereupon it shall be the duty of the justice or clerk having the custody of such bond to endorse thereon that it has been forfeited, when such bond shall have the force and effect of a judgment against all the obligors for the value of such property, with legal interest thereon from its date, upon which execution may issue as on other judgments. * * *

(Act of August 13, 1870, 102, Sec. 14. P. D., 1294, Art. 6367.)

(*v*.) * * * All bonds given as security for costs shall have the force and effect of judgments against all the obligors for the said costs.

(Act of August 17, 1876, Justices' Courts, 165, Sec. 27. *Infra*, x.)

(*w*.) Upon affirmance of case in the Supreme Court the forfeiture relates back to the time of the execution of the bond, and the lien which springs out of it does likewise.—*Berry et al.* v. *B. B. Shuler*, 25 Texas Sup., 140; *Robertson* v. *Moorer*, 25 Texas, 442.

(*x*.) Justices' cost bonds of course must be recorded to create a lien, as provided in section 20, for the record of justice's judgments.

[The compiler here acknowledges his indebtedness to the Hon. John B. Rector, late Judge of the Thirty-first District, and now of the Austin bar, for the whole of the foregoing section—§ 36, a-x.]

OF WILLS.

§ 37. (*a*.) "Every person aged twenty-one years or upwards, being of sound mind, shall have power, at his or her will and pleasure, by last will and testament, in writing, to devise all the estate, right, title and interest in possession, reversion or remainder which he or she hath, or at the time of his or her death shall have, of, in or to lands, tenements, hereditaments, or annuities or rents charged upon or rising out of them, or shall have of, in or to any personal property whatever, so as such will and testament be signed by the testator, or by some other person in his or her presence and by his or her direction; and, moreover, if not wholly written by himself or herself, be attested by two or more credible witnesses, above the age of fourteen years, subscribing their names in his or her presence."

("An Act concerning wills," of March 16, 1840, 167, Sec. 7. P. D., 913, Art. 5361.)

(*b*.) "All original wills shall be recorded in the clerk's office of the court wherein they are respectively proved, and shall remain there, except during such time as they may be in any courts, having been moved thither for the purpose of inspection, by *certiorari* or otherwise, after which they shall be returned to said office."

(Id., Sec 12. P. D., 915, Art. 5372.)

(*c*.) It does not lie within the scope of this compilation to insert sections 6 and 7 of the Act concerning wills (P. D., 914, 915, Arts. 5366, 5367), which relate to Nuncupative Wills—wills that are made verbally, and not in writing—"in the time of the last sickness of the deceased," etc.

Such wills must be made "at his or her habitation, or where he or she hath resided for ten days next preceding, except when the deceased is taken sick from home, and dies before he or she returns to such habitation, nor when the value exceeds thirty dollars," etc. As three credible witnesses must be called on by the testator or testatrix, and the verbal will must be reduced to writing within six

days, and no testimony is admissible to prove such will after six months, in all such cases it is the safer practice to employ and follow the directions of competent counsel.

(*d*.) No form of will is prescribed by any statute of Texas. If the meaning is clear, it is sufficient. If it be "wholly written"—not partly written—by the testator or testatrix, there need be no subscribing witnesses. If it be in a different handwriting from that of the testator or testatrix, it must be "attested by two or more (not *less*) credible witnesses, above the age of fourteen years, subscribing their names in his or her presence."

(*e*.) It must be signed by the testator or testatrix, "or by some other person *in his or her presence, and by his or her direction*."

(*f*.) It is not required to be sealed, but a sealing has been held a sufficient signing (2 Bouvier's Law Dic., 651, Sec. 9), and it is preferable that it should be sealed as well as signed, and attested by subscribing witnesses, even when wholly in the handwriting of the testator or testatrix.

Outline of form of a last Will and Testament.

(*g*.) I, ———, of the county of —— and State of ———, being of sound mind, do make and publish this as my last will and testament, hereby revoking any will or wills that may have been heretofore at any time or times by me made.

First—I desire that [all my lawful debts shall be paid—if any there be].

Second—I will and bequeath unto ———, —— ——

Third—I will and bequeath unto ———, —— ——, etc.

[The following may be inserted when desired:]

(*h*.) I do hereby appoint ——— and ———, of ——, the executors of this, my last will and testament, the survivor to act alone in case of the death of the other, and direct that they shall not be required to give bond and security as such.

(*i*.) I direct that no other action shall be had in the county court in relation to the settlement of my estate than the probate and registration of this my will, and the return of an inventory of my estate.* In witness whereof I have hereunto set my hand and affixed my seal to this as my last will and testament, which is written [wholly by

*Acts of 1876, 124, section 117.

myself, if such be the fact], on one sheet of paper, and is attested by the ——— credible subscribing witnesses whose names are signed hereto as such, in my presence and at my request, each of whom is over fourteen years of age, and is also witness to the signature of the other (or others).

Signed, sealed and published as his (or her) last will and testament by the said ———, at whose request we sign the same in his (or her) presence as subscribing witnesses, each being also witness to the signature of the other (or others.)

——— ——— [L. S.]

——— ———

——— ———

——— ———

(*j*.) As a general rule, all written documents, in order to be proved, must be produced in court, together with the witnesses to identify them, that the court and jury may, by inspection, be assured of the existence and genuineness of the instrument; and the proof of the identity should be first made before any other evidence in relation to the instrument is admitted, except in cases where the law has expressly dispensed with the identification of instruments.—*Renn* v. *Samos*, 33 Texas, 760.

(*k*.) That the will is in the handwriting of one of the principal legatees is another circumstance which casts suspicion in the present case, and which calls for explanatory proof. (Vickery v. Gibbs, 21 Texas, 574, cited with approval.)—*Id.*

(*l*.) A will made on the eve of absence which declares the testator's wish, "should I die while absent," is contingent, and does not take effect if the party die at home, or after his return from his intended absence.—*Phelps* v. *Ashton*, 30 Texas, 345.

See also Texas Digest, title "*Wills*," 575, and P. D., 912, note 1164.

MARRIAGE LICENSES AND THE RETURNS THEREON.

§ 38. (*a*) "The said clerk* shall record all licenses issued by him, in a well bound book kept for that purpose;

*The clerk of the county court.

and it shall also be the duty of the persons solemnizing the rites of matrimony to endorse the same on the license and make return of the same to the office of the clerk of the county court within sixty days after the celebration as aforesaid, which return shall also be recorded as aforesaid."

("An Act to legalize certain marriages, to provide for the celebration of marriages, and for other purposes," of June 5, 1837, 234, Sec. 6. H. D., 742, Art. 2443. O. & W. D., 316, Art. 1413. P. D., 783, Art. 4668.)

(*b*.) The Act, of which the above is the sixth section, authorizes "all regular ordained ministers of the gospel, judges of the district courts, justices of the county courts, and all justices of the peace," to celebrate the rites of matrimony between all persons legally authorized to marry (males under fourteen and females under twelve being prohibited, and males twenty-one years of age and females eighteen years of age not being required to obtain the consent of their parents or guardians in order to get a marriage license.)

(*c*.) One of the chief objects of the law is to secure record proof of marriages. Hence, it is desirable on the part of those most interested to see to it that the license and the return showing the marriage are duly recorded.

(*d*.) A certified copy of the license, and of the return indorsed thereon, showing when, where and by whom the rite of marriage was performed, constitute record evidence of the marriage.

(*e*.) It seems to be intimated in Robertson v. Cole, 12 Texas, 362, that a marriage without a compliance with the Act may be binding.

(*f*.) For the law as to unlawful marriages, etc., see P. D., 429, 430, Arts. 2014-2029.

(*g*.) A county clerk who issues a marriage license to a male under twenty-one, or to a female under eighteen, is punishable by a fine not exceeding one thousand dollars. (P. D., 472, Art. 2461.)

MARRIAGE SETTLEMENTS.

§ 39. (*a*.) "No covenant or agreement made in consideration of marriage shall be good against a purchaser for a valuable consideration, not having notice thereof, or any creditor, unless the same covenant or agreement be acknowledged by the party to be bound thereby, or proved

by two witnesses to be his, her or their act; if land be charged before the court of the county in which the land, or part thereof, lieth; or if personal estate only be settled, or covenanted, or agreed to be paid or settled before the court of that county in which such personal estate shall remain, and before the court of the county in which the married parties may reside (if they reside in another county), or in the manner hereinafter directed, and be lodged with the clerk of the county court in which such property may remain, and in which such married parties may reside, to be recorded; and all the provisions of this act shall be complied with, notwithstanding anything that may be contained in the eighth section of the Act to adopt the common law, etc., approved January 20, 1840."

("An Act concerning conveyances," of February 5, 1840, 153, Sec. 2. P. D., 835, Art. 4987.)

(*b.*) "Each recorder shall also record in books to be provided for that purpose, all marriage contracts and powers of attorney, and all official bonds required to be recorded in his office, which shall be proved or acknowledged according to law and delivered to him for record."

("An Act to provide for the registry of deeds and other instruments of writing," of May 12, 1846, 236, Sec. 4. P. D., 838, Art. 5004.)

(*c.*) By agreements made in consideration of marriage and marriage contracts, is evidently meant what are known to the common law as marriage settlements. A marriage settlement is "an agreement made by the parties in contemplation of marriage, by which the title to certain property is changed, and the property to some extent becomes tied up and is rendered inalienable." (2 Bouvier's Law Dic., 111, "Marriage Settlement." and the cases there cited.)

(*d.*) Such a settlement may be made by a deed (similar to a deed conveying absolute title to land, § 9, —; § 18, i,) in which the consideration recited is the marriage. The Act of 1840 requires it to be "acknowledged by the party to be bound thereby, *or proved by two witnesses.*" (*Supra*, a.)

OF SCHEDULES OF THE SEPARATE PROPERTY OF MARRIED WOMEN.

§ 40. (*a.*) A married woman may, without her husband joining her therein, "present to any officer authorized to take acknowledgments, etc., a schedule (i. e. an inventory) particularly describing all the property, real and personal, which she now owns and possesses, or which she may own and possess at the time of her marriage, and make acknowledgment before such officer that the property described in such schedule is her separate property," who shall thereupon certify such acknowledgment officially, and his certificate shall admit it to record. The registry is declared by law "conclusive as against all subsequent creditors of, and purchasers from, the husband."

(*b.*) She can also, on acquiring, during marriage, any property by gift, devise or descent, have a schedule or inventory thereof made, and can acknowledge and register the same with like effect.

(*c.*) Though the language of the Act is imperative, it seems that in consideration of her coverture, a failure on her part to comply therewith—which it is desirable she should do—has been held not to prejudice her. (See Warren v. Dickerson, 3 Texas, 462, and Parks v. Willard, 1 Texas, 361.)*

(*d.*) Section 1. *Be it enacted by the Legislature of the State of Texas*, That all property, real and personal, owned or claimed by married women, or which may be owned or claimed at the time of marriage, by any woman, or which they may acquire by gift, devise or descent, shall be registered as hereinafter directed.

(*e.*) Sec. 2. *Be it further enacted*, That each woman now married, or who may be hereafter married, may present to any officer authorized by law to probate deeds or other instruments for record, a schedule, particularly describing all the property, real and personal, which she now owns and possesses, or which she may own and possess at the time of her marriage, and make acknowledgment before such officer that the property described in such schedule is her separate property; and upon such acknowledgment, the officer aforesaid shall give a certificate of the fact under his hand and

seal of office, which certificate shall be sufficient evidence for the recorder of any county to register the said schedule.

(*f*.) Sec. 3. *Be it further enacted*, That each married woman, upon coming into possession of any property, real or personal, to which she had claim at the time of her marriage, or which she may afterwards acquire by gift, devise or descent, may have the same registered in the same manner as prescribed in the foregoing section.

(*g*.) Sec. 4. *Be it further enacted*, That the registry of the wife's separate property, herein provided for, shall be made in the county or counties in which it may really lie; and if there be personal property, then also in the county where the wife may reside; and in case of her removal to another county, the registry may also be made in the county to which she may so remove, within three months after such removal.

(*h*.) Sec. 5. *Be it further enacted*, That all registrations of the wife's separate property, which have been made heretofore, shall be deemed good and valid under this act; *provided*, said registrations were made in accordance with the laws then in force.

(*i*.) Sec. 6. *Be it further enacted*, That the registry of any schedule of a wife's separate property, made in accordance with the provisions of this Act, shall be conclusive as against all subsequent creditors of, and purchasers from, the husband.

("An Act to provide for the registration of the separate property of married women," of April 20, 1846, 153, 154. P. D., 837, 838, Arts. 4995–5000.

(*j*.) No form of the schedule or inventory is given in the Act. It seems advisable, however, that it should be dated and signed, though the Act does not in terms require it.

POWERS OF ATTORNEY—WHEN INTENDED TO HAVE EFFECT AS CONSTRUCTIVE NOTICE.

§ 41. (*a*.) The statutes expressly make all powers of attorney (that they may operate as constructive notice) registrable. Where a power of attorney is a "written contract in relation to lands" it is made registrable by the Act concerning conveyance (*supra*, § 3, g.) The registry Act (*supra*, § 39, b) goes farther—makes "all powers of attorney," without restriction as to their nature, registrable.

(*b*.) At common law, any person may sign the name of another so as to bind him as effectually as if he had signed himself, if such person is verbally authorized to sign and actually signs in the presence of the individual who verbally authorizes him.

(*c*.) A power of attorney, however, is indispensable in case it should be necessary to do many acts in the place and stead of another, and in his name, so as to be thoroughly binding upon him. By a power framed suitably, the attorney-in-fact, as the appointee is generally termed, may, in the name of his appointer, receive pay dividends on stock, legacies, collect debts, transfer stocks, convey lands, execute, deliver and acknowledge deeds, acknowledge satisfaction of mortgages or deeds of trust, and do many other lawful acts, too numerous to be here specified.

(*d*.) The appointer can, by so expressly prescribing in the power, authorize the attorney-in-fact to act by a substitute of his own selection.

(*e*.) He can empower him to sign his (the appointer's) name alone, and not in the usual manner—"A. B., by his attorney-in-fact, (or by his attorney), C. D."

(*f*.) The following is a form of power of attorney to convey a tract of land. It can be modified so as to effect any of the purposes named:

Form of Power of Attorney to convey land.

The State of Texas, County of ———.

Know all men by these presents, that I, A. B., of ——— have made, constituted and appointed, and by these presents do make, constitute, appoint, confirm and in my place and stead depute C. D., of ———, my true and lawful attorney, for me, and in my name and place, to grant, bargain and sell all that certain tract of land situate in the county of ———, in the State of ———, which is

more particularly described as follows: [Here insert the description] with the appurtenances, and all my estate, right, title and interest therein, unto such person or persons, and for such price or prices as he shall think proper; and also for me, in my name, place and stead, and as my proper act and deed, to sign, seal, deliver and acknowledge such deed of conveyance as shall be necessary for the absolute granting and assuring of the premises to the purchaser or purchasers in fee simple, with [here insert the covenant, or covenants, if any, authorized]—he to receive and receipt for the purchase money. Hereby ratifying and holding for firm and effectual all and whatsoever my said attorney shall lawfully do in and about the premises by virtue hereof. In witness whereof, I have hereunto set my hand and affixed my seal, this —— day of ———, eighteen hundred and ——.

Signed, sealed and delivered in presence of, etc. (as *supra*, 38, § 17, j.)

——— ——— [L. S.]

——— ———

——— ———

——— ———

(*g*.) In most cases where a deed would be evidence—as an ancient deed—without proof of its execution, the power under which it purports to have been executed will be presumed.—*Johnson* v. *Shaw*, 41 Texas, 428.

(*h*) A deed made under a power after the death of the principal, is void.—*Cox* v. *Bray*, 28 Texas, 247.

(*i*.) A bond signed C. E., attorney-in-fact for Charles E., held binding on Charles.—*Eckhart* v. *Reidel*, 16 Texas, 66.

(*j*.) A power of attorney not coupled with an interest is revoked by the death of the principal.—*Primm* v. *Stewart*, 7 Texas, 178.

(*k*.) The conditions and solemnities annexed to the execution of a power must be strictly complied with, however unessential they might otherwise have been. Their observance is indispensable, and admits of no equivalent or substitution.—*Crosby* v. *Huston*, 1 Texas, 203.

DEEDS RESPECTING THE TITLE OF PERSONAL CHATTELS.

§ 42. (*a*.) Sec. 12. Every deed respecting the title of personal chattels hereafter executed, which by law ought to be recorded, shall be recorded in the clerk's office of the

county court of that county in which the property shall remain; and if afterwards the person claiming the title under such deed shall permit any other person in whose possession such property may be, to remove with the same, or any part thereof, out of the county in which such deed shall be recorded, and shall not, within four months after such removal, cause the deed aforesaid to be certified to the county court of the county to which such other person shall so have removed, and to be delivered to the clerk to be there recorded, such deed, for so long as it shall not be recorded in such last mentioned county, and for so much of the property aforesaid as shall be removed, shall be void in law as to all purchasers thereof for valuable consideration, without notice, and as to all creditors.

(An Act concerning conveyances, of February 5, 1840, 156, Sec. 12. P. D., 837, Art. 4993. *Supra*, § 3, l.)

(*b*) From the above statutory provision it appears that where the title to personal chattels (i. e. property other than land, or real property), which is not in possession, is sought to be changed, or incumbered, without an actual delivery of possession, it must be done by deed—not by any written instrument of less dignity—which deed of conveyance or incumbrance, as for example a deed of trust or a mortgage, must be recorded in the county "in which the property shall remain"; and that if the property be removed by permission, the deed must, within four months thereafter, be recorded in the county "in which such other person shall so have removed."

If conveyed while out of possession, or incumbered while out of possession, or removed by permission after having been conveyed or incumbered as stated, the "deed" of conveyance or incumbrance must be recorded as indicated or else will be "void in law as to all purchasers thereof for a valuable consideration, without notice; and as to all creditors." The next section of the Act (see *supra*, § 3, m) provides that all such, and, indeed, all other written instruments specified therein, "which shall be acknowledged, proved or certified according to law, and delivered to the clerk of the proper county to be recorded," shall take effect as constructive notice from such delivery "and from that time only."

(*c*.) An exception to this rule appears to exist in favor of married women. (See *supra*, § 40, c.)

(*d.*) Attention is here again called to the two healing Acts which seem to have been intended to embrace registrable instruments of all sorts, whether touching real or personal property, that had been recorded at the dates of their respective enactment. (See P. D., 832, Art. 4977, and 841, Art. 5021, but query as to their scope and effect?)

(*e.*) The late healing Act (see Gen. Laws of 1876, Ch. 62, 61) undertakes to validate certificates of acknowledgment made by *married women* only, when "wanting in any word or words necessary to be contained in such certificates of acknowledgment by the requirements of the statutes in such cases made and provided"! Is not this directly contrary to the Constitution? (See Const. of 1876, Art. 1, Sec. 16.)

DEEDS OF TRUST AND MORTGAGES OF PERSONAL PROPERTY.

§ 43. (*a.*) * * * * "and all deeds of trust and mortgages whatsoever." * * *

("An Act concerning conveyances, of February 5, 1840, 154, Sec. 4. P. D., 836, Art. 4988. *Supra*, § 3, d.)

(*b.*) "Every deed respecting the title of personal chattels, hereafter executed, which by law ought to be recorded, shall be recorded in the clerk's office of the county court of that county in which the property shall remain." * * *

(*Id.*, 156, Sec. 12. P. D., 837, Art. 4993. *Supra*, § 3, l. See also § 33, ——, § 34, ——, and § 40, ——.)

(*c.*) *Bona fide* deeds of trust and mortgages of personal property, especially when the possession remains with the party executing them, ought to be prepared and executed in the same manner as similar instruments embracing land, and in order to be protective as notice should be recorded, on acknowledgment or proof and certificate, in the county where such property is at the time; or if removed, "within four months after such removal" the deed or other instrument should be delivered to the clerk of the county court of that county to which it is removed, to be there recorded—else it will be "void in law as to all purchasers thereof for a valuable consideration without notice, and as to all creditors." (P. D., 837, Art. 4993.)

As deeds of trust and mortgages of personal property are in all respects similar to the like instruments incumbering land—indeed,

lands and personal property being often included in the same instrument—it is deemed unnecessary to insert forms of such instruments in this place.

OFFICIAL BONDS.

§ 44. (*a.*) The official bonds of all county officers are required by the Acts creating their respective offices to be recorded in the clerk's office of the county court of the county of which they are officers. These bonds appear to be required to be both deposited and recorded in the county clerk's office, with the single exception of the bond of the county clerk, which must be recorded in his office and "deposited in the office of the district clerk of the county." (Gen. Laws of 1876, Ch. 15, 10, Sec. 2.)

THE EAR-MARKS AND BRANDS OF LIVE STOCK.

§ 45. (*a.*) "Every person in this State who has cattle, hogs, sheep or goats shall have an ear-mark and brand differing from the ear-mark and brand of his neighbors, which ear-mark and brand shall be recorded by the clerk of the county court where such cattle, hogs, sheep or goats shall be; and no person shall use more than one brand, but may record his brand in as many counties as he may think necessary."

(An Act regulating marks and brands, of March 20, 1848, 156, Sec. 1. H. D., 738, Art. 2428. O. & W. D., 315, Art. 1403. P. D., 781, Art. 4655.)

(*b.*) An unrecorded brand is admissible in proving the identity of a stolen animal, the title being established by other testimony.—*Poage* v. *The State*, 42 Texas, 454.

(*c*) It is error to admit as evidence the mark and brand of a party without preliminary proof that the same is recorded.—*Sylvester* v. *The State*, 42 Texas, 496.

(*d.*) A mark is admissible to prove the ownership of hogs, though not recorded.—*Dixon* v. *The State*, 19 Texas, 134.

(*e.*) A mark and brand, to be evidence of property, should be recorded. *Corn* v. *The State*, 41 Texas, 301.

COPIES OF DEEDS, ETC., THE ORIGINALS OF WHICH REMAIN IN THE PUBLIC ARCHIVES.

§ 46. (*a*.) "That copies of all deeds, etc., when the originals remain in the public archives, and were executed in conformity with the laws existing at their dates, duly certified by the proper officers, shall be admitted to record in the county where such land lies."

("An Act the better to define the duties of recorders," of January 19, 1839, 47, Sec. 2. H. D. 835, Art. 2761. O. & W. D., 381, Art. 1724. P. D., 835, Art. 4984.)

(*b*.) Where an original assignment (of a certificate) cannot be withdrawn from the General Land Office, it seems that on affidavit (H. D., Art. 745) a certified copy may be used.—*Graham* v. *Henry*, 17 Texas, 164.

ALL TITLES ISSUED BY THE COMMISSIONER OF THE GENERAL LAND OFFICE AND COPIES OF ALL TITLES RECORDED IN THE GENERAL LAND OFFICE.

§ 47. (*a*.) "That each Recorder shall record all titles issued by the Commissioner of the General Land Office, and copies of all titles recorded in the General Land Office, presented for record; *provided*, such titles or copies are attested with the seal of the General Land Office." * * *

("An Act to provide for the registry of deeds and other instruments of writing," of May 12, 1846, 237, Sec. 6. H. D., 842, Art. 2789. O. & W. D., 382, Art. 1733. P. D., 838, Art. 5006.)

(*b*.) The land offices were closed on November 13, 1835, and all Mexican titles issued after that date held null and void.—*Donaldson* v. *Dodd*, 12 Texas, 381.

(*c*.) The General Land Office held not to have been practically opened until some time in 1844. (See Dobbin v. Bryan, 5 Texas, 276.)—*Emmons* v. *Oldham*, 12 Texas, 18.

(*d*.) An instrument not in the official custody of the Commissioner of

the General Land Office, though in the General Land Office, cannot be proved by a certified copy.—*Dikes* v. *Miller*, 11 Texas, 98.

(*e*.) It may here be remarked that patents being recorded in the General Land Office when issued, are only recorded in the counties where the lands lie in order to show a clear title on the county records, and in order to obtain the benefit of the statute of limitations.

CONCLUDING NOTES.

(*a*) It is to be noted that acknowledgments by married women under the "Act prescribing the mode by which married persons may dispose of their separate property," of February 3, 1841, 144, could only be taken by a *judge of the district court*, or the *chief justice of the county court*.

(*b*.) The decisions of the Supreme Court of Texas touching *vendor's lien* have been omitted because such lien, where it exists at all, exists by operation of law, and not by contract. (See Brown v. Christie, 35 Texas, 689; Malone v. Kaufman, 38 Texas, 454; McDonough v. Cross, 40 Texas, 251; White v. Downs, 40 Texas, 225; and Briscoe v. Bronough, 1 Texas, 326.) If a lien be expressly (i. e. in terms) reserved in a deed, it is a contract lien, and not a "vendor's lien." If, as has been held (see *supra*, § 11, a, and § 8, s, v), the title does not pass until the purchase money is paid, a vendor's lien seems not only unnecessary but impossible—for a vendor cannot have a lien on his own legal or fee simple title in his own favor.

It seems to the compiler that a vendor's lien could only exist in case of a sale of land on a credit, evidenced by an executed conveyance—one passing the legal or fee simple title (not an executory one)—specifying the amount of the purchase money, and when it becomes due.

(*c*.) As to the remedy in case record books have been destroyed (or burned), see "An act to provide for the supplying of lost records in the several counties in this State," of April 14, 1874, Ch. 79, 100; "An Act to amend an Act entitled an Act to provide for the supplying of lost records in the several counties in this State, approved April 14, 1874," of July 13, 1876, Ch. 48, 45; and "An Act to provide for supplying lost records in certain cases," of April 12, 1876, Ch. 90, 134—all of which are purposely omitted, not properly having a place in this work.

APPENDIX A.

CONSISTING OF A LIST OF ALL

OFFICERS OF THE STATE OF TEXAS

UNDER THE CONSTITUTION OF 1876

AUTHORIZED TO TAKE ACKNOWLEDGMENTS AND PROOFS FOR RECORD.

Furnished by Hon. I. G. Searcy, Secretary of State.

(See *supra*, 43, § 19, *d*, *g*, and note *.)

JUDGES OF SUPREME COURT OF THE STATE OF TEXAS.

Honorable O. M. Roberts, Chief Justice.
Honorable George F. Moore, Associate Justice.
Honorable R. S. Gould, Associate Justice.

JUDGES OF THE DISTRICT COURTS OF THE STATE OF TEXAS.

(See *supra*, 43, § 19, *d.*)

1. H. C. Pedigo, Woodville, Tyler county.
2. A. J. Booty, Carthage, Panola county.
3. R. S. Walker, Nacogdoches, Nacogdoches county.
4. Wm. D. Wood, Centreville, Leon county.
5. B. T. Estes, Texarkana, Bowie county.
6. R. R. Gaines, Clarksville, Red River county.
7. M. H. Bonner, Tyler, Smith county.
8. G. J. Clark, Kaufman, Kaufman county.
9. Spencer Ford, Bryan, Brazos county.
10. J. A. Carroll, Denton, Denton county.
11. Nat. M. Burford, Dallas, Dallas county.*
12. J. R. Fleming, Comanche, Comanche county.
13. D. M. Prendergast, Springfield, Limestone county.
14. X. B. Saunders, Belton, Bell county.†
15. L. W. Moore, Lagrange, Fayette county.
16. E. B. Turner, Austin, Travis county.
17. W. A. Blackburn, Burnet, Burnet county.
18. W. H. Burkhart, Matagorda, Matagorda county.
19. Everett Lewis, Gonzales, Gonzales county.
20. Allen Blacker, Ysleta, El Paso, county.
21. James R. Masterson, Houston, Harris county.
22. G. H. Noonan, San Antonio, Bexar county.
23. H. C. Pleasant, Clinton, DeWitt county.
24. T. M. Paschal, Brackett, Kinney county.
25. Edward Dougherty, Brownsville, Cameron county.‡
26. W. H. Stewart, Galveston, Galveston county.
27. Joseph Bledsoe.
14. L. C. Alexander, Belton, Bell county.
25. John C. Russell, Brownsville, Cameron county.
11. Zimri Hunt, Dallas, Dallas county.

* Resigned September 1, 1877. † Resigned April 20, 1877. ‡ Deceased.

DISTRICT AND COUNTY COURT CLERKS OF THE STATE OF TEXAS.

(See *supra*, 43, § 19, *d* and *g*.)

County.	*Name.*	*Office.*	*County Seat.*
Atascosa	A. J. Martin	Dist. and Co. cl'k	Pleasanton.
Austin	G. W. Matthews	County clerk	Bellville.
Austin	E. R. Thomas	District clerk	Bellville.
Aransas	L. Ballou	Dist. and Co. cl'k	Rockport.
Bandera	Chas. Montague, jr.	Dist. and Co. cl'k	Bandera.
Bastrop	John M. Finney	County clerk	Bastrop.
Bastrop	George R. Allen	District clerk	Bastrop.
Bee	H. W. Wilson	Dist. and Co. cl'k	Beeville.
Bell	W. G. W. Stone	County clerk	Belton.
Bell	W. W. Upshaw	District clerk	Belton.
Bexar	Samuel S. Smith	County clerk	San Antonio.
Bexar	G. R. Dashiel	District clerk	San Antonio.
Blanco	J. W. Herman*	County clerk	Blanco City.
Blanco	William McCarty	County clerk	Blanco City.
Bosque	F. M. Collyer	County clerk	Meridian.
Bosque	John C. Johnson	District clerk	Meridian.
Bowie	A. G. Hoskins	County clerk	Boston.
Bowie	Lewis Alexander	District clerk	Boston.
Brazoria	Charles Holmes*	County clerk	Brazoria.
Brazoria	William H. Sharp	County clerk	Brazoria.
Brazoria	J. E. Sanger	District clerk	Brazoria.
Brazos	Hammett Hardy	County clerk	Bryan.
Brazos	J. C. Gillespie	District clerk	Bryan.
Brown	Henry Ford	County clerk	Brownwood.
Brown	J. H. Gideon	District clerk	Brownwood.
Burleson	Thomas M. Hunt†	County clerk	Caldwell.
Burleson	Wm. N. Heslep	County clerk	Caldwell.
Burleson	Wm. F. Grant‡	District clerk	Caldwell.
"	Jas. J. McMillan	District clerk	"
Burnet	D. L. Luce‡	Dist. and Co. cl'k	Burnet.
"	Hiram P. Hicks	District clerk	"
Caldwell	S. J. P. McDowell	County clerk	Lockhart.
"	William E. Field	District clerk	"

* Deceased. † Resigned May 31, 1877. ‡ Resigned.

County.	*Name.*	*Office.*	*County Seat.*
Calhoun	F. J Deck	County clerk	Indianola.
"	W. M. Seligson	District clerk	"
Cameron	Adol. Glaeveck	County clerk	Brownsville.
"	Emelio C. Fosto*	District clerk	"
"	Jesse Dennett	District clerk	"
Camp	A. S. Huey	County clerk	Pittsburg.
"	W. J. Covington	District clerk	"
Cass	J. L. Whittle	County clerk	Linden.
"	E. Frazier	District clerk	"
Chambers	Hugh Jackson	Dist. and Co. cl'k	Wallisville.
Cherokee	W. L. Byrd	County clerk	Rusk.
"	A. Jackson	District clerk	"
Clay	G. W. Alexander	Dist. and Co. cl'k	Henrietta.
Collin	J. M. Benje	County clerk	McKinney.
"	J. O. Straughan	District clerk	"
Comal	H. E. Fischer	County clerk	New Braunfels.
"	Casiner Rudorf	District clerk	"
Coleman	L. C. Williamson	County clerk	Camp Colorado
"	W. C. Perry	District clerk	"
Colorado	Henry Wagenfuhr	County clerk	Columbus.
"	J. H. Johnson	District clerk	"
Comanche	J. D. Bonner	County clerk	Comanche.
"	M. W. Carroll	District clerk	"
Cooke	E. F. Bunch	County clerk	Gainesville.
"	T. A. Baggett	District clerk	"
Coryell	L. M. Allen	County clerk	Gatesville.
"	W. R. Hood	District clerk	"
Callahan	Isaac Shaw	County clerk	Callahan.
"	Charles H. Price	District clerk	"
Dallas	A. Harwood	County clerk	Dallas.
"	W. A. Harwood	District clerk	"
Delta	George W. Jones	Dist. and Co. c'lk	Cooper.
Denton	J. R. McCormick	County clerk	Denton.
"	L. L. Zimwalt	District clerk	"
DeWitt	R. W. Thomas	County clerk	Clinton.
Duval	A. R. Valls	Dist. and Co. cl'k	San Diego.
Eastland	A. J. Stuart	County clerk	Eastland.
"	G. W. Crutcher	District clerk	"

* Resigned January 18, 1877.

County.	*Name.*	*Office.*	*County Seat.*
Ellis	B. F. Hawkins	County clerk	Waxahachie.
"	J. S. Haynes	District clerk	"
El Paso	G. W. Wahl	Dist. and Co. cl'k	Ysleta.
Erath	J. S. Hyatt	County clerk	Stephenville.
"	W. H. Fooshe	District clerk	"
Falls	M. H. Curry	County clerk	Marlin.
"	Jesse Scruggs	District clerk	"
Fannin	J. H. Oliphant	County clerk	Bonham.
Fayette	Thomas Q. Mullin	County clerk	Lagrange.
"	J. B. Holloway	District clerk	"
Fort Bend	J. C. Smith*	County clerk	Richmond.
"	H. L. Somerville	County clerk	"
"	L. H. McCabe	District clerk	"
Franklin	George F. Yates	County clerk	Mt. Vernon.
"	W. C. Wright, jr†	District clerk	"
Freestone	T. W. Sims	County clerk	Fairfield.
"	A. G Anderson	District clerk	"
Frio	John B. McMahon	County clerk	Frio City.
"	B. T. Hart	District clerk	"
Galveston	C. T. McMahan	County clerk	Galveston.
"	J. P. Harrison	District clerk	"
Gillespie	H. Bierschroole	Dist. and Co. cl'k	Fredericksb'g.
Goliad	James A. Burke	County clerk	Goliad.
"	A. W. Appleby‡	District clerk	"
"	J. H. Pittman	District clerk	"
Gonzales	Lucien Chenault	County clerk	Gonzales.
"	B. R. Abernathy	District clerk	"
Grayson	G. A. Dickerman	County clerk	Sherman.
"	W. H. Lankford	District clerk	"
Grimes	J. L. Dickson	County clerk	Anderson.
"	F. Brigarice	District clerk	"
Guadalupe	C. L. Arbuckle	Dist. and Co. cl'k	Seguin.
Gregg	R. B. Levy	Dist. and Co. cl'k	Longview.
Hamilton	Isaac H. Steen	County clerk	Hamilton.
"	N. C. Howard	District clerk	"
Hardin	G. F. Simpson‖	Dist. and Co. cl'k	Hardin.
"	W. G. Brackin	Dist. and Co. cl'k	"
Harris	R. D. Wescott	County clerk	Houston.

* Resigned April 18, 1876. † Resigned Nov. 20, 1876. ‡ Resigned.
‖ Not commissioned.

County.	Name.	Office.	County Seat.
Harris	James Burke, jr.	District clerk	Houston.
Harrison	W. C. Pierce	County clerk	Marshall.
"	James P. Lynch	District clerk	"
Hays	E. J. L. Green	County clerk	San Marcos.
"	A. J. Cotton§	District clerk	"
Henderson	J. B. Bishop	County clerk	Athens.
"	W. T. Enstace	District clerk	"
Hidalgo	N. H. Evans	Dist. and Co. cl'k	Hidalgo.
Hill	J. M. Duncan	County clerk	Hillsboro.
"	David Derden	District clerk	"
Hood	J. R. Morris	County clerk	Granbury.
"	W. J. Haynes*	District clerk	"
"	C. T. Ewell†	District clerk	"
"	B. M. Estes	District clerk	"
Hopkins	A. N. Edwards	County clerk	Sulphur Spr'gs.
"	J. H. Ashcroft	District clerk	"
Houston	Oliver C. Aldrich	County clerk	Crockett.
"	J. C. English	District clerk	"
Hunt	N. M. Dougald	County clerk	Greenville.
"	A. S. Marshall	District clerk	"
Jack	Edward Wolffarth	County clerk	Jacksboro.
Jack	Wm. H. Mitchell‡	District clerk	"
Jackson	John R. Sanford	Dist. and Co. cl'k	Texana.
Jasper	William H. Truett	County clerk	Jasper.
"	W. P. Perkins	District clerk	"
Jefferson	W. F. Gilbert	County clerk	Beaumont.
"	W. F. Junker	District clerk	"
Johnson	G. H. Maxey	County clerk	Cleburne.
"	John B. Hudson	District clerk	"
Karnes	J. R. Bailey	County clerk	Helena.
"	N. B. Evans	District clerk	"
Kaufman	Henry Erwin	County clerk	Kaufman.
"	F. J. Broughton	District clerk	"
Kendall	H. Theis	Dist. and Co. cl'k	Bœrne.
Kerr	A. McFarland	"	Kerrville.
Kimble	E. R Kountz	"	Denman City.
Kinney	William N. Cooke.	"	Brackett.
Lamar	D. Ridley	County clerk	Paris.

* Resigned May 28, 1877. † Resigned July 24, 1877. ‡ Resigned August 11, 1877.
§ Deceased.

County.	*Name.*	*Office.*	*County Seat.*
Lamar	Sam W. Williams,	District clerk	Paris.
Lampasas	D. C. Thomas	County clerk	Lampasas.
"	H. De Walker†	District clerk	"
Lampasas	M. V. B. Sparks	District clerk	Lampasas.
Lavaca	W. W. Allen	County clerk	Hallettsville.
"	John Buchanan	District clerk	"
Leon	W. A. Patrick	County clerk	Centreville.
"	J. B. Botter	District clerk	"
Liberty	B. F. Cameron	County clerk	Liberty.
"	C. C. Chambers,*	District clerk	"
"	James C. Menter	District clerk	"
Limestone	S. D. Walker	County clerk	Groesbeeck.
"	M. T. Johnson	District clerk	"
Live Oak	F. H. Church	Dist. and Co. cl'k	Oakville.
Llano	James K. Magill†	County clerk	Llano.
"	E. R. Beeson	County clerk	"
"	J. C. Oatman	District clerk	"
Lee	James H. Fry	County clerk	Giddings.
"	W. A. Knox	District clerk	"
McCulloch	Thomas Singer	County clerk	Brady City.
"	Charles Harcourt	District clerk	"
McLennan	H. L. Guffy‡	County clerk	Waco.
"	J. W. Baker	County clerk	"
"	Charles R. Beatty	District clerk	"
McMullen	L. W. Snowdon	Dist. and Co. cl'k	Dogtown.
Madison	W. W. Viser	County clerk	Madisonville.
"	R. Mahorner	District clerk	"
Marion	P. F. Brinck	County clerk	Jefferson.
"	W. F. J. Graham	District clerk	"
Mason	Wilson Hay	Dist. and Co. cl'k	Mason.
Matagorda	John L. Croom	County clerk	Matagorda.
"	Elias Baxter	District clerk	"
Maverick	Albert Turpe	Dist. and Co. cl'k	Eagle Pass.
Medina	C. Scheidemantel	Dist. and Co. cl'k	Castroville.
Menard	C. M. Hubbell	"	Menardville.
Milam	J. C. Rogers	County clerk	Cameron.
"	B. F. Homan	District clerk	"
Montague	W. A. Williams	Dist. and Co. cl'k	Montague

* Deceased Dec. 24, 1876. † Resigned. ‡ Deceased.

County.	*Name.*	*Office.*	*County Seat.*
Morris	B. F. Wood	County clerk	Dangerfield.
"	A. A. Spence	District clerk	"
Montgomery	P. M. Yell	County clerk	Montgomery.
"	Z. E. Womack	District clerk	"
Nacogdoches	Giles B. Crain	County clerk	Nacogdoches.
Nacogdoches	Wm. Hillenkamp	District clerk	Nacogdoches.
Navarro	Sam'l H. Kerr	County clerk	Corsicana.
"	James M. Doolen	District clerk	"
Newton	John Moore	Dist. and Co. cl'k	Newton.
Nueces	Reuben Holbien	County clerk	Corpus Christi.
"	Pat. McDonough	District clerk	"
Orange	R. H. Smith	Dist. and Co. cl'k	Orange.
Palo Pinto	Wm. Metcalf	County clerk	Palo Pinto.
"	Geo. C. Lewis	District clerk	"
Panola	H. Pollard	County clerk	Carthage.
"	J. H. Lawrence	District clerk	"
Parker	R. W. Duke	County clerk	Weatherford.
"	B. G. Lanham	District clerk	"
Pecos	Ed. W. Bates	Dist. and Co. cl'k	Fort Stockton.
Polk	T. S. Meece	County clerk	Livingston.
"	W. D. Willis	District clerk	"
Presidio	G. T. Wilcox*	Dist. and Co. cl'k	Fort Davis.
Red River	John A. Bagby	County clerk	Clarksville.
Red River	C. W. Wilson	District clerk	"
Refugio	R. P. Clarkson	County clerk	Refugio.
"	Chas. D. Crain†	District clerk	"
Robertson	T. J. McHugh	County clerk	Calvert.
"	J. R. Curl	District clerk	"
Rockwall	W. B. Wade	County clerk	Rockwall.
"	J. S. Hewitt	District clerk	"
Rusk	J. N. Still	County clerk	Henderson.
"	R. C. Dickinson	District clerk	"
Rains	Thos. M. Allredd	County clerk	Emory.
"	S. K. McGowen	District clerk	"
Sabine	M. Youngblood	County clerk	Hemphill.
"	A. J. Beckcom‡	District clerk	"
"	W. H. Bonneau	"	"
San Augustine	Wm. H. Council	County clerk	San Augustine.
"	B. D. Crockett	District clerk	"

* Resigned April 17, 1877. † Resigned Aug. 15, 1877. ‡ Resigned February, 1877.

County.	*Name.*	*Office.*	*County Seat.*
San Patricio	Alex. McGloin	Dist. and Co. cl'k	San Patricio.
San Saba	John N. Canney	"	San Saba.
Shackleford	J. N. Masterton	County clerk	Fort Griffin.
"	H. C. Jacobs	District clerk	"
Shelby	John M. Lucky	County clerk	Center.
Shelby	E. G. Hinkle	District clerk	Center.
Smith	W. H. Marsh	County clerk	Tyler.
"	Geo. M. Johnson	District clerk	"
Starr	James J. Hix	Dist. and Co. cl'k	R. Grande City
Stephens	D. W. Hullam	County clerk	Pickettsville.
"	C. T. Smith	District clerk	"
Somervell	J. H. Mongomery.	Dist. and Co. cl'k	Glen Rose.
San Jacinto	G. B. Byrd	County clerk	Cold Springs.
Tarrant	Jas. P. Woods	County clerk	Fort Worth.
"	G. H. Mulkey*	District clerk	"
"	J. J. Miller	"	"
Titus	Isham Cherry	County clerk	Mt. Pleasant
"	Jas. T. McDonald	District clerk	"
Travis	Frank Brown	County clerk	Austin.
"	E. Hallman	District clerk	"
Trinity	J. T. Evans	County clerk	Pennington.
"	D. W. Steele	District clerk	"
Tyler	W. Thos. Hyde	County clerk	Woodville.
"	J. W. McDaniel	District clerk	"
Tom Green	John Lackey	Dist. and Co. cl'k	Ben Ficklin.
Upshur	J. M. Marshall	County clerk	Gilmer.
"	Jas. A. Derrick	District clerk	"
Uvalde	J. D. Spears	County clerk	Uvalde
"	J. J. H. Paterson	District clerk	"
Van Zandt	W. A. Williams	County clerk	Wills Point.
"	M. M Stower†	District clerk	"
"	J. H. Wilhite	"	"
Victoria	J E. J. Moory	County clerk	Victoria.
"	H. A. Newmeyer	District clerk	"
Walker	W. B. Rome	County clerk	Huntsville.
"	W. H. Woodall	District clerk	"
Washington	H. M. Lewis	County clerk	Brenham.
"	J. L. Moore	District clerk	"

* Resigned February 1, 1877. † Resigned May 11, 1877.

County.	*Name.*	*Office.*	*County Seat.*
Webb	Peter Steffian	Dist. and Co cl'k.	Laredo.
Wharton	Jacob Hart	County clerk	Wharton.
"	John L King	District clerk	"
Waller	R. P. Faddis‡	County clerk	Hempstead.
"	W. F. Harper	County clerk	"
"	George G. Lester.	District clerk	"
Williamson	Levi Pennington.	County clerk	Georgetown.
"	Sam M. Lesesne.	District clerk	"
Wilson	A. G. Pickett	County clerk	Floresville.
"	G. W Garrett.	District clerk	"
Wise	W. W. Brady.	County clerk	Decatur.
"	J W. Colbert .	District clerk	"
Wood	F. J. Worthy	County clerk	Quitman.
"	F. P. Dowell	District clerk	"
Young	W. T. Ditto	Dist. and Co. cl'k.	Graham.
Zapata	J. L. Ferdon	"	Carrijo.

‡ Resigned.

LIST OF JUSTICES OF THE PEACE AND EX OFFICIO NOTARIES PUBLIC IN THE STATE OF TEXAS.

(See *supra*, 43, § 19, note *.)

ANDERSON COUNTY.

Name.	*When qualified.*	*Name.*	*When qualified.*
D. A. Calhoun	April 18, 1876.	Henry Fields*	April 18, 1876.
John Parker†	do	J. M. Emerson	do
G. P. Wallace	do	J. O. A. Capps	do
A. J. Dupuy	May 27, 1876.	C. M. Quarles	June 18, 1877.

ANGELINA COUNTY.

Joseph Kerr	April 18, 1876.	Wm. A. Finley	April 18, 1876.
Joseph Chesmett	do	W. W. Speed	do

ATASCOSA COUNTY.

Willis N. Smith‡	April 18, 1876.	Aaron Rambie§	Not reported.
J. S. Fern	do	L. Colquhoun	April 18, 1876.
J. W. Cook	do	J. M. B. Lawhon	July 14, 1876.
A. W. Hazelrigg	Aug. 15, 1876.	John C. Ross	Dec. 27, 1876.

AUSTIN COUNTY.

S. R. Blake	April 18, 1876.	J. H. Shetburn	April 18, 1876.
A. M. Kinney	do	Jacob Schaffner	do
Max Messner	do		

ARANSAS COUNTY.

Wm. P. McGrew‖	April 18, 1876.	Wm. C. Casterline	April 18, 1876.
J. L. Lewis jr.	April 21, 1876.	L. H. Wyatt	Mar. 26, 1876.

BANDERA COUNTY.

J. B. Davenport	April 18, 1876.	James Taffalla	April 18, 1876.
George F. Smith	do	Joseph B. Hudspeth	July 21, 1876.
J. D. Harper¶	April 29, 1876.	S. B. Dampier	Not reported.

BASTROP COUNTY.

John Hearn	April 18, 1876.	C. H. Welburne	April 18, 1876.
H. J. Wamel	do	W. C. Lawhon	do
B. F. Jones	do	R. L. Upshaw¶	Oct. 25, 1876.
M. S. Ward	Feb. 23, 1877.	W. H. Coulson	June 11, 1877.
E. W. Farmer	June 11, 1877.		

* Resigned January 18, 1877.
† Resigned September 6, 1876.
‡ Resigned July 14, 1876.
§ Failed to qualify.
‖ Resigned March, 1877.
¶ Resigned.

BEE COUNTY.

Name.	*When qualified.*	*Name.*	*When qualified*
W. Roberts	April 18, 1876.	Chas. Summers	April 18, 1876.
A. C. Newman	May 1, 1876.	J. P. Callihan*	April 19, 1876.
J. O. Taylor†	June 1, 1876.	T. R. Atkins	Nov. 17, 1876.
Luke Hart	May 22, 1877.		

BELL COUNTY.

N. C. Edwards	April 18, 1876.	G. P. Redding	April 18, 1876.
Asa Blake‡	do	W. S. Whaley	do
J. H. Simpson	do	J. H. Weathersbee	do
John McDowell	do	A. H. Ray	do
F. A. Upshaw	Aug. 14, 1876.		

BEXAR COUNTY.

M. G. Cotton	April 18, 1876.	W. R. Houston	April 18, 1876.
H. W. Tepperwein§	do	R. B. Evans	April 22, 1876.
W. S. Walters	do	R. Quintana, sr.	May 6, 1876.
Frank Ashley	do	Arthur Blenker	June 18, 1877.

BLANCO COUNTY.

D. W. McNatt‖	April 25, 1876.	John Durbin	April 19, 1876.
Thos. J. Salter	April 24, 1876.	John T. Johnson¶	April 29, 1876.
William Jonas**	May 2, 1876.	W. S. Calahan	Sept. 19, 1876.
Hugh L. Conn	June 15, 1877.		

BOSQUE COUNTY.

R. G. Childress	April 18, 1876.	G. A. Gordon	April 18, 1876.
Daniel Womac	do	Wm. Stidham	do
R. M. Welch	Feb. 17, 1877.	J. T. Spivey	do
D. J. Spurlock	April 18, 1876	Y. Grimland	do

BOWIE COUNTY.

C. M. Aken	April 18, 1876.	M. A. Bassett††	April 18, 1876.
W. S. Procter	do	M. C. Braswell	do
Stephen R. Ellis	Oct. 3, 1876.		

BRAZORIA COUNTY.

John S. Penn	April 18, 1876.	A. J. Burke jr.	April 18, 1876.
W. H. Sharp‡‡	do	John H. Norris	do
A. C. Barnes†	June 12, 1876.	H. F. Matthews	Feb. 12, 1877.
J. L. Hudgins	Feb. 12, 1877.	Wm. M. Scott	March 5, 1877.

* Resigned May 14, 1877.
† Resigned.
‡ Commission returned July 25, 1876.
§ Resigned May 18, 1877.
‖ Resigned September 13, 1876.
¶ Resigned September 25, 1876.
** Resigned February 3, 1877.
†† Resigned September 18, 1876.
‡‡ Resigned May 8, 1876.

BRAZOS COUNTY.

Name.	When qualified.	Name.	When qualified.
L. B. Aldridge	April 18, 1876.	John H. Jones	April 18, 1876.
J. M. Zimmerman	do	A. W. Cearnel	do
G. W. Brewer	do		

BROWN COUNTY.

B. Gandy	April 18, 1876.	W. E. Gilleland	April 13, 1876.
B. P Ward	do	Bailey J. Anderson	do
James H. Wamack	do		

BURLESON COUNTY.

John M. Jackson	April 18, 1876.	Alexander Flanagan	April 18, 1876.
C. R. Barrie	do	T. D. Fontain	do
A. H. Adams	do	John C. Jones	do

BURNET COUNTY.

B. A. Crawford	April 18, 1876.	Daniel Eldridge	April 18, 1876.
A. K. Livingston*	do	A. Gusecks	April 4, 1876.
M. B. Fisher	Not reported.	C. Talifaro	May 2, 1876.
Mark Stewart	April 18, 1876.	J. A. Crews	May 30, 1876.
William Peppers	Jan. 16, 1877.	John M. Wood	April 9, 1877.

CALDWELL COUNTY.

John D. Rice	April 18, 1876.	William J. Evans	April 18, 1876.
William B. Walker	do	J. H. Gall	do
J. C. Lamb	do	John C. Peacock	do
Henry A. Rice	do		

CALHOUN COUNTY.

H. A. L. Kleinecke	April 18, 1876.	Jabez James	April 18, 1876.
Herman Liebold	do		

CAMERON COUNTY.

William H. Clark†	April 18, 1876.	George W. Miller‡	April 18, 1876
Encarnacion Salas §	do	C. Longoria	May 5, 1876.
Hilaria Garza	April 19, 1876.	Decidesio Longoria	April 19, 1876.
A. C. Howell	Aug. 18, 1877.	Atenejenes Orive	Aug. 20, 1877.

CAMP COUNTY.

R. S. Bryerly	April 18, 1876.	H. P. Thedford	April 18, 1876.
G. W. Keeling	do	Joseph H. Pitts	June 14, 1876.

CASS COUNTY.

A. T. Stone	April 18, 1876.	C. Callaway	April 18, 1876.
L. A. Whatley	do	R. M. Blaydes	do
W. T. Arrington	do		

* Resigned.
† Resigned July 18, 1877.
‡ Resigned July 12, 1877.
§ Removed September 7, 1876.

CHAMBERS COUNTY.

Name.	*When qualified.*	*Name.*	*When qualified.*
L. W. Fields	April 18, 1876.	J. W. Haukermer	April 18, 1876.
G. W. Whittington	do	Henry Dutton	do
J P. Magee	do	C. N. Eley	do

CHEROKEE COUNTY.

Hiram McKnight	April 18, 1876.	Thomas S. Townsend	April 18, 1876.
A. J. Chesher	do	James Hampton	do
W. C. Fredrick	do	N. M. Fair	April 20, 1876.
R. M. Gentry	April 27, 1876.	Duncan McCall	May 10, 1876.

CLAY COUNTY.

J.R. Bass	April 18, 1876.	J. A. Jones*	April 18, 1876.
S. O. Auberry	do	G. W. Nicholson*	do
D. N. Dodson†	Aug. 15, 1876.	W. A. Ivie	Jan 2, 1877.
C. T. Judd	Feb. 19, 1877.	J. W. Allbritton	Feb. 16, 1877.

COLLIN COUNTY.

W. R. H. Mack	April 18, 1876.	C. C. Perrin	April 18, 1876.
Jesse Coffey	do	Francis M. Bounds	do
Fentain J. Vance	do	S. B. Shelbourn	do
W. H. Brumett	do	J. P. Jenkins	Aug. 16, 1876.

COLORADO COUNTY.

John D. Gilmon	April 18, 1876.	W. H. Chemmey	April 18, 1876.
Christ Haydorn	do	R. B. Hollingsworth	do
Benjamin H. Neal	do	E L. Thenman	do
N. C. Wilson	do	George S. Zeigler	do

COMAL COUNTY.

F. J. Lindheimer	April 18, 1876.	Charles Ohlrich	April 29, 1876.
John Marlach	do	William Sattler	April 19, 1876.
Ernest Koebig	do		

COLEMAN COUNTY.

M. M. Callant	April 28, 1876.	David McAllister	April 18, 1876.
R. M. Rucker	do	G. N. Blair	Nov. 17, 1876.

COMANCHE COUNTY.

Milton Brown	April 18, 1876.	J. M. Gaiser	April 18, 1876
D. J. Rowe	do	John Roch	do
H. W. Sublett	do	A. V. Logan	March 6, 1877.

COOKE COUNTY.

W. W. Foreman	April 18, 1876.	J. P. Hall	April 18, 1876
A. P. Bray	April 17, 1876.	J. C. Roberts	do
W. Wyatt	do	J. H. Stokely	Sept. 5, 1876
Joel Estes	Sept. 5, 1876.		

* Resigned November 15, 1876.

† Resigned February 16, 1877.

‡ Disqualified; office vacant.

CORYELL COUNTY.

Name.	When qualified.	Name.	When qualified.
J. B. Hardy	April 18, 1876.	J. L. Montgomery	April 18, 1876.
T. B. Price	do	W. T. Walton	do
C. M. King	do	J. A. Dickie	do
W. D. Clark	do	J. A. Lee	do

CALLAHAN COUNTY.

E. L. Kaufman	July 30, 1877.	W. N. Warren	July 30, 1877.
R. M. Black	do	Jacob Hans	July 31, 1877.
E. Jackson	Not reported.		

DALLAS COUNTY.

W. W. Peak	April 18, 1876.	E. C. McClure	April 18, 1876.
J. R. Bluret	do	E. T. Myers	do
A. B. Lanier	do	J. H. Saunders*	do
Joseph H. Stewart	do	George W. Neely	do
John Prestont	do	W. M. George‡	Feb. 13, 1877.
Robert George	May 17, 1877.	George Robertson	May 26, 1877.

DELTA COUNTY.

F. M. McWhirter	April 18, 1876.	W R. Hallon	April 18, 1876.
D. H. Lane§	do	J. P. Boyd	May 1, 1876.
James W. Stell	do	George W. Patterson	Feb. 26, 1877.

DENTON COUNTY.

J. M. Blount	April 18, 1876.	John Shipley	April 18, 1876.
John N. Kealy	do	John Haynes	do
J. R. Harper	do	G. L. Britton	do

DE WITT COUNTY.

John B. Olfers	April 24, 1876.	Joshua N. Edgar	April 24, 1876.
L. Berry Wright	do	Isaac Egg	do
William Byers	do		

DUVAL COUNTY.

John Humphries	Dec. 4, 1876.	Jonathan Vining	Dec. 4, 1876.
Charles Roach	do	Samuel H. Finney	Jan. 8, 1877.

EASTLAND COUNTY.

J. J. Dawson	Nov. 27, 1876.	J. J. Winn	Oct. 2, 1876.
A. J. Stuart	Oct. 7, 1876.	S. M. Hale	April 18, 1876.
Y. J. Dysort	Nov. 27, 1876.	M. J. E. Ringer	do
L. W. Trader	Dec. 11, 1876.	E. T. Williamson	do

ELLIS COUNTY.

N. G. Davis	April 18, 1876.	R. P. Mackay	April 18, 1876.
John L. Cheek	do	Valentine Sevier	do
E. M. Brack	do		

* Deceased.
† Resigned March 27, 1877.
‡ Resigned May 14, 1877.
§ Resigned February 12, 1877.

EL PASO COUNTY.

Name.	When qualified.	Name.	When qualified.
Jose Ma. Gonzales§	April 18, 1876.	Guadalupe Carabajal	May 18 1876.
Demetrio Urrigo	Mar. 17, 1876.	Guellermo Gandera§	April 19, 1876.
John Evans	Nov. 20, 1876.	Porfirio Garcia	Dec. 12, 1876.
Pedro Canditario	May 8, 1877.		

ERATH COUNTY.

P. Wood	April 18, 1876.	W. C. Martin	April 18, 1876.
G. P. Cozby*	do	J. C. Hatchett	do
T. J. Morris†	do	W. H. Davis‡	do
J. B. Quinn	Oct. 27, 1876.	T. J. Belcher	Jan. 11, 1877.
J. D. St. Clair	Mar 26, 1877.		

FALLS COUNTY.

A. M Attaway	April 18, 1876.	T. B. Collins	April 18, 1876.
J. W. Etheridge	do	J. F. McDonald§	do
D. M Jackson	do	J. M. Killen	Aug. 28. 1876.

FANNIN COUNTY.

A. P. Bagby	April 18, 1876.	A. J. Duckworth	May 8, 1876.
B. Durham	do	T. J. Mayo	April 18, 1876.
Vincent Peyton	do	Geo. W. Peaks	do
Sam L. Keene	do	H. H. McLendon	do
J. W. Wyatt	do	Waddy Carlisle‖	do

FAYETTE COUNTY.

F. Brandes	April 18, 1876.	Max Meitzen	April 18, 1876.
E. Henkel	do	W. H. Thomas	do
C. Luck	do	E. H. Fordtran§	do
T. W. Smith	do	Edgar Merrin¶	do
A. D. Paulus	April 2, 1877.	W. W. Sloan	Aug. 15, 1877.

FORT BEND COUNTY.

Wm. Henry	April 18, 1876.	J. B. M. Gill	April 27, 1876.
Francis W. Williams	do	C. C. Menegan	April 18, 1876.
Milton McGinnis	do	W. C. Sims	do

FRANKLIN COUNTY.

P. C. Majors**	April 18, 1876.	R. H. Crawford	April 18, 1876.
W. A. Binson	do	B. F. Morris	do
C. D. Davis	do	Geo. F. Yates	July 17, 1876.

FREESTONE COUNTY.

W. P. Watson	April 18, 1876.	W. A. Cobb	April 18, 1876.
N. W. Keeling	do	John M. Day	do
D. L. Wingfield	do	J. B. Buchanan	do
R. C. Manning	June 26, 1877.	Wm. L. Rigsby	Aug. 13, 1877.

* Resigned January 12, 1877.
† Resigned January 11, 1877.
‡ Resigned September 7, 1876.
§ Resigned.
‖ Resigned August 18, 1877.
¶ Deceased.
** Resigned June 15, 1876.

FRIO COUNTY.

Name.	When qualified.	Name.	When qualified.
L. S. White*	April 18, 1876.	Leo Smith	May 2, 1876.
M. H. Langford	Not reported.	F. W. Neatherlin	Nov. 28, 1876.
Irvin Thompson	May 14, 1877.	C. J. Jones	May 25, 1877.

GALVESTON COUNTY.

Hugo Brosig	April 18, 1876.	Robert D. Johnson	April 18, 1876.
Thomas D. Gilbert	do	J. S. Shields, jr.	do
Henry Weyer	do	S. J. Perkins	May 6, 1876.
Walter C. Jones	Sept. 7, 1876.	George L. Griscom	Aug. 23, 1876.

GILLESPIE COUNTY.

John A. Alberthal	April 18, 1876.	J. P. Mosel	April 18, 1876.
Jacob Brodbeck	do	James Larson	do
A. J. Nixon	do		

GOLIAD COUNTY.

George W. Bell	April 18, 1876.	D. A. Edmonson	April 18, 1876.
Charles W. Word	do	J. S. Loe	do

GONZALES COUNTY.

W. V. Collins	April 18, 1876.	Mark Webber	April 18, 1876.
E. W. Walker	do	J. P. Collins	do
John O'Neal	do	James D. Smith	do
John L. Mooney†	Sept. 25, 1876.	John L. Lampkin	June 15, 1877.

GRAYSON COUNTY.

Jesse G. Rainey	April 18, 1876.	William D. Kirk	April 18, 1876.
H. B. Lindsey	do	E. E. Miller	do
T. W. Hudson	do	J. R. Diamond	do
Calvin Sellers‡	do	G. W. McGlothlin	Nov. 21, 1876.
H. H. Hays	do		

GRIMES COUNTY.

A. Buffington	April 18, 1876.	W. P. Zuber	April 18, 1876.
C. D. Harn	do	W. T. Wasson	May 29, 1876.

GUADALUPE COUNTY.

William G. King	April 18, 1876.	W. Vordenbammere	April 18, 1876.
Robert Hellman, sr.‡	do	H. Wurmet	do
R. C. Eeds§	June 12, 1876.	Thomas D. James	June 14, 1876.
James A. Glenn	Sept. 30, 1876.	J. A. Wells	June 1, 1877.

GREGG COUNTY.

J. P. Holloway‖	April 19, 1876.	G. W. George	April 18, 1876.
E. R. Dodson	April 21, 1876.	J. F. Reynolds	do
D. S. Jennings	Sept. 16, 1876.	W. H. Cunyers	do
John T. Kilgore	Nov. 29, 1876.		

* Resigned August 14, 1876.
† Resigned May 14, 1877.
‡ Resigned.
§ Resigned September 25, 1876.
‖ Resigned September 16, 1876.

HAMILTON COUNTY.

Name.	When qualified.	Name.	When qualified.
Simpson Loyd	April 22, 1876.	R. O. Forest	May 1, 1876.
R. M. Brandon	April 24, 1876.	A. A. Cary*	do
S. T. Wells	May 8, 1876.	J. P. Grundy	April 18, 1876.
James H. Callet	April 24, 1876.	J. M. Evans	do
Rufus Stinnett	Sept. 5, 1876.		

HARDIN COUNTY.

A. Brown	April 18, 1876.	James A. Merchant	April 18, 1876.
B. F. Col'inst	do	Miles Taylor	Aug. 21, 1876.

HARRIS COUNTY.

Henry Brashear	April 18, 1876.	W. A. Daley	April 18, 1876.
John Curry	do	Robert Blalock	do
G. L. Durdin	do	Peter Christin	do
J. P. Byrnes	do		

HARRISON COUNTY.

J. B. Stroud	Mar. 31, 1876.	W. L. Hailey	Mar. 14, 1876.
Wm. Roy	Mar. 16, 1876.	T. S. Buchanan	April 18, 1876.
Geo. A. Godfrey	Mar. 14, 1876.	E. B. Blalock	Dec. 28, 1876.

HAYS COUNTY.

C. W. Grooms	April 18, 1876.	J. M. Breedlove	April 18, 1876.
H. G. Little	do	L. McKellar	do

HENDERSON COUNTY.

Jesse Packwood‡	April 18, 1876.	John A. Walker	April 18, 1876.
J. P. Gassett	do	T. Y. Taylor	do
Cornelius Browning	do	L. D. Stringer§	April 19, 1876.
Jeff. E. Thompson	July 3, 1876.	S. S. Corzine	Nov. 13, 1876.

HIDALGO COUNTY.

Jose Maria Mora	Mar. 27, 1876.	Manuel Anaya	April 18, 1876.
John B. Bourbois	Mar. 27, 1876.	Teodosio Munquia	Mar. 28, 1876.
N. H. Evans	Oct. 3, 1876.		

HILL COUNTY.

H. N. Spooner	April 18, 1876.	W. P. Pardue	April 18, 1876.
Levi Childress	do	Jesse Hays	do
W. D. McFarland	do		

[illegible]D COUNTY.

Wray Happing‖	April 18, 1876.	N. J. Gardner	April 22, 1876.
Jesse Walton	May 13, 1876.	H. T. Berry	April 18, 1876.
A. T. Howell	May 19, 1877.	E. A. Boyett	Aug. 13, 1877.

* Resigned August 14, 1876.
‡ Left the county.
‖ Resigned May 19, 1877.
† Resigned June 10, 1877.
§ Resigned November 13, 1876.

HOPKINS COUNTY.

Name.	*When qualified.*	*Name.*	*When qualified.*
Lewis Starr	April 18, 1876.	T. L. Simmes	April 18, 1876.
William Gray	do	H. E. Williams	do
O. C. McCoy	April 25, 1876.	A. J. Lowe	April 19, 1876.
D. S. Weaver	April 18, 1876.		

HOUSTON COUNTY.

W. J. Foster	April 18, 1876.	D. H. Edens	April 18, 1876.
Z. B. John	do	C. M. Monday	do
Samuel H. Sharp	do	Thomas A. Taylor	Aug. 24, 1876.
J. A. Barbee	Feb. 13, 1877.	W. A. Champion	Feb. 17, 1877.

HUNT COUNTY.

John J. Nicholson	April 18, 1876.	Samuel P. Moore	April 18, 1876.
Nat Parker	do	A. H. Hefner	do
H. H. Wood	do	J. M. Clinton	Feb. 11, 1877.

JACK COUNTY.

James Perret	April 18, 1876.	Abraham Perret	April 18, 1876.
L. H. Pruit	do	W. L. Thomas	do
William Scott	do		

JACKSON COUNTY.

J. M. Haley	April 18, 1876.	A. Baker*	April 18, 1876.
P. P. Autnam	May 9, 1876.	M. H. Slaughter	Oct. 10, 1876.

JASPER COUNTY.

Henry Rolph	April 18, 1876.	Thomas Gilbratht	April 18, 1876.
R. J. Bean	do	Albert Nautze‡	do
John Morse	Dec. 29, 1876.	A. S. Beek	June 12, 1876.

JEFFERSON COUNTY.

W. L. Rigsby	April 18, 1876.	G. F. Block	April 18, 1876.
Benjamin Granger	April 25, 1876.	Simeon Broussard	do

JOHNSON COUNTY.

James G. Hix	April 18, 1876.	Allen N. Wilbanks	April 18, 1876.
Samuel Hughes	do	Samuel B. Killough	do
J. H. Boyd	do		

KARNES COUNTY.

G. W. Brown§	April 18, 1876.	John Kuhinel	April 18, 1876.
John D. Hutcherson	do	Charles H. Skiles	Oct. 7, 1876.
A. D. Evans	do	W. J. Seale§	Dec. 2, 1876.
J. C. Wilson§	April 26, 1877.	J. A. Addington	April 20, 1877.

* Resigned July 25, 1876.
† Resigned June 1, 1877.
‡ Resigned November 27, 1876.
§ Resigned.

KAUFMAN COUNTY.

Name.	When qualified.	Name.	When qualified.
E. E. Douglas	April 18, 1876.	John B. Newberry†	April 18, 1876.
F. A. Dulaney	do	D. H. Mallory*	do
J. W. Dickson†	do	James M. Green	do
James S. Rains	do	James R. Bridges	June 16, 1876.
W. O. Johnson	July 31, 1876.	Seaman Field	Feb. 2, 1877.
W. C. Hallonquist	Mar. 28, 1877.	A. L. Self	May 1, 1877.

KENDALL COUNTY.

Adolph Zoeller	April 18, 1876.	Frederick Hofhing	April 18, 1876.
John W. Lawhorn	do	Theo. Wiedenfeld	do
E. A. F. Toepperwein	Feb. 13, 1877.	Frederick Ebell	Feb. 27, 1877.

KERR COUNTY.

William P. Hughes	April 18, 1876.	William D. Drown	April 18, 1876.
Thomas Ingenshutt	do	John G. Welch	do

KIMBLE COUNTY.

R. F. Condon	April 18, 1876.	William B. Meeks	Not reported.
R. F. Anderson	do	John A. Miller	do
J. W. Owens	do	J. C. Price	April 18, 1876.

KINNEY COUNTY.

W. W. Arnett	April 18, 1876.	J. E. Therrell‡	April 18, 1876.
George Miller	April 25, 1876.	George Schwanderer§	do
William B. Hudson	April 18, 1876.	William L. Goodman,	Aug. 19, 1876.
G. E. Halliday‖	Jan. 4, 1877.	W. S. Henningway	March 5, 1877.
Joseph E. Therrell	May 3, 1877.		

LAMAR COUNTY.

B. F. Fuller	April 18, 1876.	John L. Fowler	April 18, 1876.
Ed. Skidmore	do	W. J. McGowen	do
John Maxwell	do		

LAMPASAS COUNTY.

John S. Brown	April 18, 1876.	S. T. Bright	April 18, 1876.
W. C. Shaw	do	J. R. Townsen	do
Matthew Roach	do		

LAVACA COUNTY.

Jesse Green	April 19, 1876.	W. D. Watson	April 19, 1876.
T. A. Arnold*	April 25, 1876.	C. C. Haynes¶	do
E. M. Warks	April 19, 1876.	J. J. M. Woodly	do
Pat May	do	J. W. Reese**	Aug. 28, 1876.
H. B. Myers	Nov. 13, 1876.	D. E. Hicks	Dec. 11, 1876.
E. P. Noble, sr	July 13, 1877.		

* Resigned.
† Deceased.
‡ Resigned December 26, 1876.
§ Resigned June 29, 1876.
‖ Resigned February 12, 1877.
¶ Resigned July 1, 1877.
** Resigned November 18, 1876.

LEON COUNTY.

Name.	When qualified.	Name.	When qualified.
Aaron Barnes	April 18, 1876.	Bruno Durst	April 18, 1876.
E. J. Oden	do	James Byrnes	do
E. A. Powell	do	J. L. Perry	Aug. 18, 1877.
J. J. Dotson	Aug. 28, 1877.		

LIBERTY COUNTY.

M. Steasoff	April 18, 1876.	B. F. Ellis, jr	April 18, 1876.
A. Isaacs	do	B. F. Warring*	do
J. M. Cavanaugh	do	A. J. Abshier	Feb. 12, 1876.

LIMESTONE COUNTY.

L. G. Aspley	April 18, 1876.	T. B. Wharton	April 18, 1876.
G. S. Gregory	do	B. R. Tyus	do
J. L. Conaly	do	Henry Wageman	do
W. E. Doyle	do		

LIVE OAK COUNTY.

G. W. Jones	April 18, 1876.	S. W. Lewis	April 18, 1876.
Pat. Murphy	do	J. W. Ramey	do
Z. H. Osborne	do		

LLANO COUNTY.

Samuel P. May	April 18, 1876.	Isaac B. Maxwell	April 25, 1876.
G. L. Hickman	do	F. M. Bourland	April 18, 1876.

LEE COUNTY.

J. A. Nisbet	April 18, 1876.	L. Burgdorft	Not reported.
T. I. Edwards	do	Tom Arendal	April 18, 1876.

M'CULLOCH COUNTY.

L. D. Crittenden‡	May 6, 1876.	T. J. Creech	April 18, 1876.
John P. Fonda	Sept. 7, 1876.	M. E. Cox	do
A. J. Carpenter	Aug. 22, 1876.		

M'LENNAN COUNTY.

E. P. Massey	April 18, 1876.	A. D. Mass	April 18, 1876.
F. M. Makeys	Mar 15, 1876.	W. G. Boyd	do
A. H. Crain	do	E. T. Cox	do

M'MULLEN COUNTY.

S. F. Dixon	Jan'y 5, 1877.	John Hill	Jan'y 5, 1877.
Charles Forrester	do	J. F. Linden	Aug. 1, 1877.

MADISON COUNTY.

C. J. Booth	April 15, 1876.	R. A. Rhodes	April 18, 1876.
Thomas A. McDonald	April 18, 1876.	H. B. Cobb	do
W. T. Hardee	April 25, 1876.		

* Deceased January 1877.

† Deceased.

‡ Resigned.

MARION COUNTY.

Name.	When qualified.	Name.	When qualified.
E. R. Raglin	April 18, 1876.	Samuel J. White	April 18, 1876.
C. C. Bickford	do	G. S. H. Grayson	do
George W. Wood	do	A. Fitzgerald	Nov. 22, 1876.

MASON COUNTY.

Conrad Simon	April 18, 1876.	Fritz A. Grote	April 18, 1876.
D. A. Parish	May 18, 1877.	C. G. Wood	Not reported.

MATAGORDA COUNTY.

Joseph Nolte	April 18, 1876.	A. B. Bronson	May 1, 1876.
J. G. Rainey	do	Pertilla Lee	April 26, 1876.
Horace Yeamans	do		

MAVERICK COUNTY.

F. C. Dell	April 18, 1876.	Frank R. Lehman	April 27, 1876.
F. A. Zorn*	Nov. 17, 1876.	Frank Williams	June 4, 1877.

MEDINA COUNTY.

Valentine Uaass	April 22, 1876.	John T. Braten	May 8, 1876.
H. J. Richay	April 27, 1876.	R. S. Ragsdale	April 15, 1876.

MENARD COUNTY.

C. M. Hubbell	April 18, 1876.	Oscar Splitgarber	April 18, 1876.
James Hamilton	do	D. M. Basham	do
James Moorkins	July 31, 1876.		

MILAM COUNTY.

C. Homant	April 18, 1876.	Jasper McKinney	April 18, 1876.
W. D. Hill	do	John C. Crunk	do
A. H. Boles	April 19, 1876.	R. R. Cook‡	do
James Peeler	Jan 18, 1877.	J. H. Kilpatrick	May 16, 1877.

MONTAGUE COUNTY.

J. C. Stephens	April 18, 1876.	Randolph Cook	April 18, 1876.
J. F. Bellows	do	C. J. Hale	do
U. J. Wagnon	May 1, 1876.	Walter S. Thurston	April 16, 1877.

MORRIS COUNTY.

John A. Heimant	April 18, 1876.	David B. Sorrells	April 18, 1876.
John R. Powell	do	S. P. Pounders	do

MONTGOMERY COUNTY.

L. S. McKee	April 18, 1876.	David A. Wiggins	April 18, 1876.
C. D. Lacy§	do	Edmund A. Linton	do
J. H. Bay	Dec. 4, 1876.	B. H. Nash	Nov. 17, 1876.

* Resigned May 15, 1877.
† Deceased.
‡ Resigned November 13, 1876.
§ Bondsmen gave him up and displaced.

NACOGDOCHES COUNTY.

Name.	*When qualified*	*Name.*	*When qualified.*
Joel Durham	April 18, 1876.	Jesse J. Watkins	April 18, 1876.
William L. Tynes	do	Joseph W. Little*	do
John W. Murph	do	John C. Fall	Oct. 20, 1876.
W. T. Caver	Dec. 4, 1876.	O. P. Fears	do

NAVARRO COUNTY.

Thomas J. Haynes	April 18, 1876.	J. R. Ransom	April 18, 1876.
O. W. Stone	do	J. A. Scalest	do
W. H. Marsh	do	T. L. Swink	April 29, 1876.

NEWTON COUNTY.

Spencer H. Matthews	April 18, 1876.	Allen Woods	May 1, 1876.
Henry T. Wilson	do	J. D. Youngblood	May 3, 1876.

NUECES COUNTY.

Cornelius Cahill	April 18, 1876.	William G. Rhew	April 24, 1876.
E. N. Gray	Feb. 26, 1876.	James Fullerton	April 18, 1876.
Samuel T. Stevenson	July 5, 1877.		

ORANGE COUNTY.

A. H. Canfield	April 18, 1876.	A. B. Lyons	April 18, 1876.
R. C. Gravett	April 22, 1876.		

PALO PINTO COUNTY.

E. K. Taylor	April 18, 1876.	S. M. Swearingen‡	Not reported.
W. F. Moutgomery	do	D. H. McLure	May 21, 1877.
W. E. Wade	do	R. W. Pollard	Aug. 13, 1876.
Jacob Swank	Aug. 24, 1876.		

PANOLA COUNTY.

T. E. Boren	April 18, 1876.	R. A. Craig	April 18, 1876.
G. S. Geter	do	James W. Carter	April 29, 1876.
E. G. Knight	May 6, 1876.	Anderson Robe	April 18, 1876.
John A. Leslie	April 18, 1876.	S. P. Page	do

PARKER COUNTY.

John W. Squyres	April 18, 1876.	J. L. Mattock	April 18, 1876.
Stephen Jewell	do	James Barnett	do
D. W. Wristen	do		

PECOS COUNTY.

Faustina Lufau	April 18, 1876.	Francisco Garcia	April 18, 1876.
Guadalupe Carrasco	do	Antonio Mata	do
Emelio Savedra	do	M. F. Corbett	Nov. 21, 1876.

* Resigned.

‡ Moved from district.

† Resigned December 25, 1876.

POLK COUNTY.

Name.	When qualified.	Name.	When qualified.
W. H. Matthews*	April 18, 1876.	Wm. P. Rogers†	April 18, 1876.
M. T. Hickman	do	L. P. Jordan	do
S. W. Lockhart, sr	do	T. R. McCrary‡	June 18, 1876.
J. M. Calliham	Nov. 14, 1876.	Thos. L. Freeman	Feb. 16, 1877.

PRESIDIO COUNTY.

Jacob Morrow	May 16, 1876.	Larkin Landrum	May 12, 1876.
Segundino Lujan§	Not reported.	J. W. Spencer‖	Not reported.
Daniel Murphy¶	do	S. R. Miller	do
Wm. M. Ford	May 16, 1877.	Richard C. Daily	April 19, 1877.
Samuel Terrell	Not reported.		

RED RIVER COUNTY.

James T. Fleming	April 18, 1876.	Wm. A. Maulden	April 18, 1876.
John A. Franklin	do	John K. Rogers	April 22, 1876.
T. M. Harris	do	James Burnes	do
Wiley W. Giddens	do	J. T. Peak	April 18, 1876.

REFUGIO COUNTY.

Thos. Cannon**	April 15, 1876.	George Irvine	April 18, 1876.
Hugh Red	do		

ROBERTSON COUNTY.

W. J. Purdom	April 18, 1876.	David P. Gay	April 18, 1876.
S. F. Neely	May 1, 1876.	John G. Reeves	April 18, 1876.
J. M. Joiner	April 18, 1876.	J. T. Young	do

ROCKWALL COUNTY.

John Butler	April 18, 1876.	T. W. Yeary	April 18, 1876.
J. W. Peyton	do	J. E. Sherwood	do

RUSK COUNTY.

W. P. Davis	April 18, 1876.	J. C. Spinks	April 18, 1876.
F. H. Garrison	do	Isaac Lawler	do
B. B. Lyles	do	P. H. Tally	Sept. 26, 1876.
D. M. Deason	Sept. 11, 1876.		

RAINS COUNTY.

A. C. Gee	April 18, 1876.	H. H. Deaton	April 22, 1876.
H. H. Justice	do	P. T. Taylor	May 6, 1876.

SABINE COUNTY.

L. Arthur	April 18, 1876.	R. J. Dickey††	April 18, 1876.
F. Berryman	do	C. M. Bennett‡‡	do
L. F. Glover	May 27, 1876.	W. T. Ellington	Jan. 18, 1877.
J. W. Smith	Feb. 13, 1877.		

* Resigned February 12, 1877.
† Resigned June 1, 1876.
‡ Resigned November 13, 1876.
§ Resigned February 18, 1877.
‖ Resigned February 20, 1877.
¶ Resigned May 14, 1877.
** Resigned August 27, 1877.
†† Resigned February 13, 1877.
‡‡ Resigned February 18, 1877.

SAN AUGUSTINE COUNTY.

Name.	*When qualified.*	*Name.*	*When qualified.*
A. C. Holmes	April 18, 1876.	F. W. Saunders	April 18, 1876.
Thomas Hunt	do	B. J. Lewis	do
T. B. Barker	do		

SAN PATRICIO COUNTY.

John Ryan	April 18, 1876.	John H. Paschal	April 18, 1876.
J. L. Green*	do		

SAN SABA COUNTY.

J. W. Thomas	April 18, 1876.	J. D. Cunningham	April 18, 1876.
David Hanna	do	Wm. Alexander	do
John McNeil	do	T. D. Dawson	do

SHACKLEFORD COUNTY.

J. P. Lasley†	April 18, 1876.	J. C. Simpson‡	April 18, 1876.
J. N. Browning	do	E. L. Walker	do
J. Wallach*	Mar. 20, 1877.	Edgar Rye	May 15, 1877.

SHELBY COUNTY.

J. S. Gholston	April 18, 1876.	W. A. McKenzie	May 1, 1876.
R. W. Field	May 1, 1876.	L. M. Truit	do
J. P. Soape§	do	P. N. Bentley	Dec. 4, 1876.
Wm. D. Ellington	Dec. 18, 1876.	Thos. McKnight‖	May 18, 1876.

SMITH COUNTY.

C. W. Matthews	April 18, 1876.	John O. Collier	April 18, 1876.
B. W. Thompson, sr.	do	M. S. Taylor	do
John S. Jackson	do		

STARR COUNTY.

Hermene Henejosa	April 18, 1876.	Martin de la Fuente	April 22, 1876.
Domingo Vela	do	H. S. Pearce‖	May 8, 1876.
Sam. J. Stewart	Aug. 15, 1876.		

STEPHENS COUNTY.

C. T. Parker	June 1, 1876.	Elias Lovette	June 1, 1876.
S. T. Pepper	Feb. 26, 1877.	W. C. Scott	do
H. H. Nunn¶	June 1, 1876.	T. W. Byers	Feb. 26, 1877.
J. H. Hightower	April 9, 1877.		

SOMERVELL COUNTY.

Clifton Scott	April 18, 1876.	H. Stephens**	April 18, 1876.
J. J. Matthews	do	W. H. Barker	do
James West	July 18, 1876.		

* Left the county.
‡ Resigned March 27, 1877.
‖ Resigned.
** Resigned June 5, 1877.
† Resigned November 27, 1876.
§ Resigned November 15, 1876.
¶ Resigned February 27, 1877.

SAN JACINTO COUNTY.

Name.	*When qualified.*	*Name.*	*When qualified.*
James N. Harris*	April 18, 1876.	Samuel B. Standley	April 18, 1876.
Thomas J. Cooper	do	Thos. H. Snow	April 24, 1876.
Jacob Dishough*	April 26, 1876.	J. W. Thompson	Nov. 14, 1876.
Thos. W. Billingsley	June 15, 1877.		

TARRANT COUNTY.

A. G. McClure	April 18, 1876.	George W. Jopling	April 18, 1876.
Elihu Newton	do	T. E. Cross	do
W. H. H. Moore	do	F. E. Tyler	do
W. D. Harris	do	James Grimley	do

TITUS COUNTY.

William J. Johnson	April 18, 1876.	William T. Smith	April 18, 1876.
C. D. C. Fishback	do	W. T. Presley	May 29, 1876.

TRAVIS COUNTY.

A. Brown	April 18, 1876.	T. C. Wilbern	April 24, 1876.
F. Tegener	do	James Neil	April 18, 1876.
G. G. Rucker	do	J. P. McArthur	do
Tiff Johnson	do	P. G. Leech	Dec. 11, 1876.
J. P. Smith	Feb. 14, 1877.		

TRINITY COUNTY.

J. D. Foster†	April 19, 1876.	S. J. Rogers‡	April 18, 1876.
D. F. Richardson§	do	J. T. Gates‖	do
C. B. Wood¶	Sept. —, 1876.	William Rogers**	Nov. —, 1876.
K. R. Blackshead	Dec. —, 1876.	J. W. Hamilton	Aug. —, 1876.
W. D. Shaw	do	T. D. Stanford	Not reported.

TYLER COUNTY.

W. D. Kincaid	April 18, 1876.	Josiah Swearingin	Not qualified.
W. I. Stewart	do	D. E. Tompkins	April 18, 1876.
John H. Mayo	do	D. A. Kirkland	Not reported.

TOM GREEN COUNTY.

John B. Vince*	April 18, 1876.	J. G. Prinsser	April 18, 1876.
A. O. Doherty*	do	A. P. Baze	do
William H. Tomblin	Dec. 27, 1876.		

UPSHUR COUNTY.

J. J. Lyons	April 18, 1876.	A. Johnson*	May 2, 1876.
J. L. Fore	do	Thomas Cranfield	April 18, 1876.
J. C. Howard	do	I. S. Stephens	Aug. 15, 1876.
W. W. Fulkerson*	Not reported.	Virgil L. Kilgore	April 18, 1877.
E. J. Glover	Feb. 17, 1877.		

* Resigned.
‡ Resigned December 4, 1876.
‖ Resigned September 20, 1876.
** Resigned December 4, 1876.
† Resigned September 22, 1876.
§ Resigned July 31, 1876.
¶ Resigned November 13, 1876.

UVALDE COUNTY.

Name.	When qualified.	Name.	When qualified.
R. T. Creigler	April 24, 1876.	J. P. Rheimer	Not reported.
Earnest Weigler	April 18, 1876.	J. J. Simpson	do
G. E. Mansfield	do	Alex. Marshall	April 24, 1876.
Stephen Goodman	do		

VAN ZANDT COUNTY.

J. H. Kellis*	April 18, 1876.	R. P. Pridmore†	April 18, 1876.
Clayton Williams	do	J. W. Clowers	do
John Cothran	do	J. M. Burns	Aug. 2, 1876.
J. H. Wilhite	Nov. 17, 1876.	P. L. Parker‡	Nov. 8, 1876.
E. N. Eubanks	April 3, 1877.		

VICTORIA COUNTY.

C. G. Hall	April 18, 1876.	E. M. Phelps	April 27, 1876.
Q. Davidson§	do	J. M. Edgar	May 7, 1876.
S. W. Hill	do		

WHARTON COUNTY.

M. D. Simpson‖	Not reported.	C. J. Battle‖	April 18, 1876.
Aaron Lee	do	W. D. Callaway‖	do
P. H. Pettey	Jan. 20, 1877.	H. J. Schley	Jan. 12, 1877.
Henry T. Compton	July 21, 1877.		

WALLER COUNTY.

R. E. Hannay	April 18, 1876.	Reuben Morris	May 6, 1876.
T. S. Pinkney	do	Edwin Waller, jr.	May 1, 1876.
Dennis Starks (col)	do	John M. Pinkney	Nov. 13, 1876.

WILLIAMSON COUNTY.

A. W. Morrow	April 18, 1876.	James H. Fanbim	April 18, 1876.
James G. Ward	do	W. A. Smith	do
William E. Bouchelle	do	H. M. Pratt¶	do
Samuel M. Slaughter	do	G. R. Booth**	do
J. M. Napier	Sept. 21, 1876.	R. R. Hyland	Oct. 17, 1876.

WALKER COUNTY.

J. S. Besser	April 18, 1876.	R. M. Bankhead	April 18, 1876.
D. D. Holland	do	H. W. Fisher	do
J. F. Burnet	April 22, 1876.	J. B. Taylor††	do
S. T. Barnes	Oct. 9, 1876.	G. D. Tomkins	do

WASHINGTON COUNTY.

J. W. McCown	April 18, 1876.	I. M. Oniers	April 18, 1876.
T. O. Hynes	do	B. H. Watson	do
T. H. Lipscomb	do		

* Resigned September 22, 1876.
† Resigned July 7, 1876.
‡ Resigned February 13. 1876.
§ Resigned February 15, 1876.
‖ Resigned.
¶ Resigned September 5, 1876.
** Resigned October 13, 1876.
†† Resigned October 9, 1876.

WEBB COUNTY.

Name.	*When qualified.*	*Name.*	*When qualified.*
Lewis Telles*	April 18, 1876.	Bartola Moreno	April 18, 1876.
Jose A. G. Navarrot	do	S. M. Jarvis	do
J. M. Rodriguez	Mar. 3, 1877.	T. K. Anderson	Sept 4, 1876.

WILSON COUNTY.

W. H. Hough‡	April 18, 1876.	M. C. Herrera	April 18, 1876.
P. S. Warren	do	James M. Bird	do
James L. Dial	do	W. K. Fly	May 1, 1876.
Geo. W. Moody§	do	C. H. Walde	Feb. 13, 1877.
John E. McMullen	Feb. 14, 1876.		

WISE COUNTY.

James Scarborough	April 18, 1877.	E. Farrington	April 18, 1876.
Adam Johnson	April 30. 1876.	B. F. Banks	do
C. C. Leonard	April 18, 1876.		

WOOD COUNTY.

G. W. Hutchings	April 18, 1876.	J. H. Newsom‖	April 18, 1876.
J. C. Mapes	do	J. J. Kennedy	do
T. B. Wells	do	A. Morrison	do
J. E. Word	Nov. 4, 1876.		

YOUNG COUNTY.

John A. Lafferty	April 18, 1876.	J. M. McBrayer	April 18, 1876.
Geo. W. Guinn¶	do	Thomas Bradwell	May 8, 1876.
J. A. Ledbetter	Feb. 27, 1877.		

ZAPATA COUNTY.

D. A. Seely	April 18, 1876.	Manuel Ma. Uribe	April 18, 1876.

* Resigned February 27, 1877.
† Resigned August 16, 1876.
‡ Died February 10, 1877.
§ Resigned February 8, 1877.
‖ Resigned.
¶ Resigned February 15, 1877.

LIST OF NOTARIES PUBLIC

Appointed by the Governor, by and with the advice and consent of two-thirds of the Senate during the session of the Fifteenth Legislature of the State of Texas.

(See *supra*, 43, § 19, *d-f.*)

Anderson County—George W. Angle, Benjamin Parker, John Y. Gooch, W. A. Miller, G. W. Hudson.

Angelina County—James G. McKnight.

Atascosa County—Wright Williams, John Campbell.

Austin County—T. J. Eidman, John H. Crancher, F. Peters, W. B. Wilte, J. H. Catlin, sr., Nehemiah Cochran, John W. Lott, Jasper N. Daniel, J. C. Sutton.

Aransas County—W. W. Dunlap, C. F. Bailey.

Bastrop County—W. A. Highsmith, John P. Jones, Seth W. Briggs, Robert P. Jones, R. B. Upshaw.

Bandera County, none.

Bee County—George Craven, Thomas J. Winn, R. H. Gillette, Julian J. Swann.

Bell County—George W. Tyler, Samuel J. Brown, R. T. Elliott, J. H. Scales, L. W Caldwell, W. E. Bradford, J. B. B. Supple, R. H. Taylor, Edward T. Rucker, Isaac H. Lawton, H. H. Parker, J. T. Beach.

Bexar County—George W. Caldwell, Edward Miles, Henry L. Radaz, Anton Gugger, W. H. Young, Louis Girand, John A. Fraser, George W. Bartholomew (resigned June 8, 1877), P. H. Ward, Elias Edmonds, James L. Trueheart, B. F. Kelly, John Eckford, Henry Weir, H. P. Howard, John Rosenheimer, W. G. M. Samuel, John Humphrey.

Blanco County—A. W. Mousand, John L. Crain.

Brazos County—A. C. Brietz, J. P. Ayres, J. D. Thomas, J. A. Buckholts, S. R. Henderson, W. G. Taliaferro, J. G. Anderson, B. F. Lemon, H. D. Lawless.

Bosque County—F. M. Browning.

Bowie County—L. C. DeMorse, G. D. Dalby, Thomas W. Hooks, J. H. Smelser, W. J. H. Brinsing, C. L. Pitcher.

Brazoria County—W. McMaster, W. Fort Smith, J. P. Bryan, J. J. Thurman, Anthony Metcalf.

Brown County—John Y. Rankin, P. M. Thurmond.

Burleson County—M. H. Addison, N. M. Thornton, Thomas C. Thompson, W. H. Jenkins, J. C. Womble.

Burnet County—J. W. Posey, E. J. Moses, C. C. Stewart.

Caldwell County—C. P. Collins, James A. Wiley, H. McLester.

Calhoun County—William S. Chickester, C. W. Short, J. Cahn, W. C. Edwards, John Boemer, James McCappin.

Cameron County—William M. O'Leary, Jesse Dennett, H. L. Howlett, J. W. Bradford.

Camp County—G. M. Dinkle, W. D. Credille.

Cass County—E. A. Allday, C. Palmore, William E. Duncan, John Norwood, G. C. Harrison, William H. Carlton, J. H. Perdue, J. C. Hutchison.

Chambers County—P. A. Huffman, James Armstrong.

Clay County—J. E. Jordan, T. B. Reese, John W. Cook, L. C. Barrett, W. W. H. Lawrence (left the county).

Cherokee County—J. A. Templeton, E. L. Gregg, F. W. Bonner, J. F. Templeton, F. R. Gilbert, S. A. Bloomfield, James M. Wiggins.

Collin County—Alex. Berry, J. M. Wilcox, J. C. White, T. B. Wilson, James Thompson, F. Emmerson, A. T. Robertson, Martin Lewis, J. H. McCallon, H. C. Overaker, J. A. Aston, J. S. Wilson.

Colorado County—George McCormick, J. C. Kindred, D. W. Jackson, J. F. Leindecker, H. C. Everett, William Schoellman, J. D. Roberdean, French Simpson.

Comal County—Fred Hampe, C. A. Groos.

Coleman County—D. A. Sinclair.

Comanche County—C. B. Mason, N. Yarbrough, George E. Lawrence, J. W. Hill, E. L. Shropshire, Arthur J. Pilgrim, R. T. Childs.

Cooke County—W. O. Davis, E. A. Blanton, J. M. Monroe, John Wilkins, John Wilburn, C. C. Potter, John T. Walker, Henry C. Dent.

Coryell County—J. F. F. Doherty, W. E. Weaver, G. A. Strickland, J. A. Rawles, S. D. Lacy, W. E. Oakes.

Dallas County—Richard Morgan, John M. McCoy, J. H. Allbretton, R. A. Roberts, D. W. Adams, Julius Roger, C. H. Patrick, J. H. Swindells, William Harris, T. D. Coats, T. M. Hammond, J. D. Stephens, Alfred H. Benners, Charles F. Tucker, A. H. Steagall, R. W. Goldthwait, E. G. Bower, William Sproul, J. J. Cox.

Delta County—James M. Brown, J. B. Simpson.

Denton County—A. C. Nance, F. H. Dixon, John Bacon, W. M. Davenport, John Collier, John Ruddel, J. W. Jagoe, F. M. Yates, James Eads, Benjamin Moss, John G. Smithson, S. B. McQuinn.

DeWitt County—C. C. Howerton, C. G. Hartman, J. D. Terry, Rudolp Kleburg, John Rutledge, Fred Schewitz.

Duval county has no notaries.

Eastland County—D. B. Corley, Peter Davidson.

Ellis County—R. G. Phillips, S. C. McCormick, John C. S. Baird, W. J. Stokes, W. T. M. Dickson, J. C. Wilson, G. C. Parks, Albert Langley, J. N. Paggett, R. M. Wyatt, E. C. Newton, Elbert Newton.

El Paso County—Joseph Schutz.

Erath County—G. W. Gentry, S. D. Berry, J. D. St. Clair.

Falls County—W. W. Hazlewood, J. R. McDonald, Leonard Magee, J. R. Dickinson (resigned August 29, 1877), George A. Hodges, James C. Gaither, jr., J. T. Somerville.

Fannin County—F. D. Stewart, A. B. Scarborough, R. M. Lusk, Francis M. German, James C. Evans, Sam J. Galbraeth, W. E. Dailey, sr., John L. Blair, J. R. Ryan, Thomas D. Kenedy, J. M. Hoard, H. H. McLendon, Charles Doss, H. L. Parmalee.

Fayette County—E. C. Phelps, W. S. Chunn, A. Henderson, Chas. Brunner, Herrman Meyer, G. W. Scallorn, A. F. Darnwell, A. B. Kerr (resigned December 18, 1876), C. Amberg, Neil Robinson, A. Haeduset, A. D. Paulus.

Fort Bend County—J. W. Parker, J. M. Weston, Robert J. Calder.

Franklin County—John Gray, W. T. Gregor, Thomas Rouse, T. W. Templeton.

Freestone County—F. G. Gallett, J. T. Steward, Robert Mayes, T. J. Sheffield, H. P. Daviss, F. B. Looney.

Frio county has no notaries.

Galveston County—James Sorley, James Hickey, Alexander Sampson, C. M. Mason, Henry C. Mayer, Samuel Boyer Davis, John J. Harcourt, Robert T. Byrne, Charles B. Gardener, Henry Sayles, E. P. Albritton, W. R. Johnson, W. M. Jerdone, John C. Walker, D. T. Holland (resigned December 29, 1876), J. Stewart Cleveland, John Adriance, jr., E. S. Fletcher, J. Lovenberg, Oscar E. Finley.

Gillespie County—Chris. C. Callan, Julius Schuhardt.

Goliad County—R. P. Wilkinson, E. Parkinson.

Gonzales County—A. T. Touns, W. S. Fly, Thomas H. Spooner, L. H. Planck, Samuel T. Winston, J. L. Lamkin, W. F. King, James Wheat, J. C. Gillespie, S. H. Woldie, J. M. Cox, W. B. Frederich, William Lott.

Grayson County—Thomas W. Randolph, James Paxton (resigned August 29, 1877), J. M. Cook, S. T. Fontaine (left the county), C. L. Jordan, A. H. Coffin, S. S. Tears, Samuel Savage, John Givens, M. G. Brush, G. Y. McKinney, B. F. Barrett, E. H. Kinslow, J. R. Jeter, G. W. Porter, John M. Wilson, J. W. Givens.

Grimes County—J. M. Freeman, J. H. Wilson, Benjamin Goodrich, W. J. Calloway, J. E. Teague, O. B. Caldwell, P. C. McKee, B. M. B. Tucker, George E. White, J. W. Mayfield, W. W. Meachem, H. D. Patrick, John R. Kennard.

Guadalupe County—Samuel L. McCulloch, Asa J. L. Sowell, A. M. Erskine, E. F. Batte, S. M. Holmes, Oscar Starke.

Gregg County—John T. Gilgore, C. F. Witherspoon, E. S. Terry.

Hamilton County—J. A. Eidson, L. K. Billingsly, J. C. Gouldy (resigned August 22, 1876).

Hardin county has no notaries public.

Harris County—R. A. Giraud, B. F. McDonough, A. W. Spencer, Thomas H. Conklin, J. R. Harris, Emille Semmler, Garrett Hardcastle, Samuel S. Ash, A. P. Tompkins, A. R. Masterson, F. M. Poland, J. C. Kidd, A. L. Steele, James T. Ferguson, E. C. Stockton, E. P. Turner, D. U. Barziza.

Harrison County—R. P. Littlejohn, C. H. McGill, W. B. Cooke, A. R. Woodall, William A. Smith, R. R. Wright, A. T. Smith.

Hays County—Isaac H. Julian, Edward R. Kone, Christopher P. Dailey.

Henderson County—R. J. Jennings, W. L. Faulk, R. F. Gore.

Hidalgo county has no notaries.

Hill County—D. A. Griffin, Joseph Cale, R. M. Elder, Sidney Files, R. M. Sayers.

Hood County—T. J. Duke, Benjamin J. Tipton, W. H. Milwee, F. E. Garland.

Hopkins County—A. A. Henderson, W. Y. Box, W. D. Byrd, John Askew, R. S. Blythe, Wilson A. Green, Jesse M. Morris.

Houston County—James E. Bowman, B. F. Duren, William J. Chaffin.

Hunt County—J. B. Bounseville, T. G. Smith, W. R. Lane, Sam-

uel Davis, S. R. Etter, Alonzo Cushman, S. S. Weaver, W. C. Walker, B. R. Wilson, J. H. Jernigan, D. W. Yeager.

Jack County—J. M. Rogers, James R. Robinson.

Jackson County—John S. Menifee, J. D. Owen, James W. Allen.

Jasper County—W. W. Blake, T. J. Carraway, W. H. Ford, J. W. Sanders, James R. Lee.

Jefferson County—A. Blonchet, Mark Wiess, R. H. Leonard.

Johnson County—Wm. M. Scurlock, J. M. Odell, H. J. D. Hendricks, R. M. Linn, William Jack, J. F. Golding, Phil. T. Allen.

Karnes County—James Calvert, L. D. Cook, E. Rzeppa, John Hutchinson, D. B. Butler.

Kaufman County—Robert C. Dansby, P. M. Moorehouse, J. T. Smith, F. A. Waters, R. A. Terrell, L. H. Bryant, V. W. Grubbs, J. N. Dougherty, G. A. Buchanan, H. B. McCorkle, J. T. Ayers.

Kendall County—Henry C. King.

Kerr county has no Notaries.

Kimble county has no Notaries.

Kinney County—Isaiah L. Martin, Laurent Oncntell, W. W. Lambert.

Lamar County—J. E. Ellis, Henry Moore, Young Berger, W. F. Gill, J. P. Graham, Nat. P. Jackson, J. G. Dudley, U. Matheisen, Eugene Easton, L. H. Williams, Edward Collins, J. J. Wilson, R. J. Patton, James McLong, J. E. Roberts, B. J. Baldwin, jr., Robert P. Mayo, M. W. Moody.

Lampasas County—M. V. B. Sparks (resigned November 4, 1876), W. Chalk, A. G. Walker.

Lavaca County—John Woods, William Saltwelle (resigned May 1, 1877), H. K. Judd, J. W. McGill, W. B. Rhodes, A. W. Hicks.

Leon County—W. R. Ellis, W. H. Holland, Ananias Green, A. D. Boggs, H. B. Pruet (resigned March 21, 1877), J. H. Reed.

Liberty county has no Notaries.

Live Oak county has no Notaries.

Limestone County—James M. Love, H. W. Morgan, A. K. Jackson, W. J. Gibbs, A. C. Pendergast, A. Barn, N. L. Waller, J. R. Harwell, T. J. Gibson, J. A. Wright, Wm. D. Donaldson, J. C. Marton, W. P. Crown, J. W. Seale.

Llano county, none.

Lee County—Wm. Burns, A. F. Rainwater, Wm. M. Scallorn, C. M. Seale, M. F. Alexander.

McCulloch County—Charles Harcourt.

McLennan County—F. H. Robertson, John T. Walton, J. P. Surratt, R. W. Davis, S. M. Johnson, W. C. Barnett, E. A. McKinney, D. A. Kelley, L. N. Bruce, Tom C. Smith, James J. Moore. W. A. Taylor, O. H. Leland, John L. Dyer, Reginald G. Pidcocke, Y. C. A. Rogers.

McMullen county has no Notaries.

Madison County—Rie Mahorner, John Vernon, Ed. Goree, J. M. Bennick.

Marion County—George R. Beard, Wm. A. Walker, J. S. D. Weatherall, W. H. Cook, John H. Parsons, Louis B. Todd, Wm. E. Estes, John W. Lee, John D. Leland.

Mason County—Henry M. Holmes, John O. Menseback, George W. Todd.

Matagorda County—Wm. C. Braman, Edgar Hawkins, John F. Holt.

Maverick county has no Notaries.

Medina County—James Paul, Charles De Montel.

Menard County—J. J. Callan.

Milam County—F. A. Hill, William L. Bailey, J. S. Perry, T. M. Freeman, W. E. Easterwood.

Montague County—John H. Stephens, Wade Atkins, W. H. Grigsby, John S. Love, W. D. Allen, A. L. Shoemaker.

Morris County—Luke Giles.

Montgomery County—H. R. Bell, William L. Rodgers, Charles Almsler, L. G. Clepper, John L. Dupree, Jacob M. Fullenwider, John N. Scott.

Nacogdoches County—Clifton Wells, James C. Swift, O. P. Fears, J. N. Buchner, B. W. Pye.

Navarro County—John D. Clark, O. M. Stone, Ely H. Foreman, Bryan T. Barry, D. B. Hartzell, J. C. Bartlett, H. A. Halbert, F. A. Reed, John H. Rice, B. F. Marchbanks, W. H. Wagley, L. B. Haynie.

Newton County—T. W. Ford, T. S. McFarland, H. F. Wilson, C. H. Nemitt.

Nueces County—John Vining, J. W. Ward, M. F. Gaffney, William A. Ball, George E. Conklin, E. A. Atlee, John S. Lynch, J. C. Russell.

Orange county has no Notaries.

Palo Pinto County—C. W. Massie, Sam. P. Haynes, J. K. P. Shirley, William Veale.

Panola County—John M. Mays, J. N. Hays, D. Y. Gammage, S. S. Adams, Brook D. Holland, T. G. Allison, T. A. Cadenhead.

Parker County—George A. McCall, C. L. Heifrin, B. F. Brannan.

Pecos County—M. F. Corbett.

Polk County—B. W. Hanry, C. G. Filze.

Presidio County—O. M. Keesey, William Russell.

Red River County—D. W. Cheatham, A. M. Taylor, A. P. Corley, R. C. Graves, John H. Beaty, James H. Brown, F. M. Smith, F. M. Montgomery, A. B. Winston, W. H. Mauldin, J. H. Johnson, John Stiles, James H. Caton.

Refugio County—Elijah T. Morrow, Thomas Blair, Edward S. Atkisson.

Robertson County—Wyndham Kemp, T. A. Menefee, W. T. Neale, J. A. Holland, Harrison Owen, George D. Haswell, Wm. P. Brown, William H. Davidson, W. A. Rumple, Thomas O. Sampson (died).

Rockwall county has no Notaries.

Rusk County—W. H. Hillem, J. L. Findlay, Thomas J. Goodwin, M. W. Pierson, George H. Matthews, J. B. Hollingsworth, William B. Garrison, John T. Maddox, B. H. Gibson, L. D. Stephens, A. G. Johnson, Thomas H. Stell, G. H. Gould.

Raines County—J. R. McMahon.

Sabine County—S. D. Harp, R. P. Sibley, W. W. Weatherred, J. M. Borders.

San Augustine County—Rufus Price, William A. McClanahan.

San Patricio County—T. H. O'Callaghan.

San Saba County—J. Frazier Brown.

Shackleford County—C. K. Stribling, R. A. Jeffries.

Shelby County—James P. Payne, D. M. Short, Sam. W. Weaver, Charles M. Hill, J. M. Hairgrove.

Starr county has no Notaries.

Smith County—Allen P. Letchworth, T. James, John H. Bonner, Martin Jernigan, J. J. Flynn, W. O. Murphy, John Dean, E. G. Littlejohn, John M. Castles, B. C. Rhome.

Stephens County—J. S. Harlan.

Somervell County—E. D. McCoy.

San Jacinto County—E. A. Stocking, R. T. Robinson, L. A. McGowan.

Tarrant County—J. F. Beall, J. P. Lipscomb, A. J. Chambers, Jesse Jones, J. S. Morris, J. J. Ingram, J. C. Scott, Thomas A. Nance, Zane Cetti, J. R. St Clair, J. P. Smith, T. O. Moody (died), C. C. Cummings, M. J. Brinson, W. E. Kneeland, G. Nance.

Titus County—D. R. Reynolds.

Tyler County—J. M. Rotan.

Travis County—I. G. Searcy (resigned November 28, 1876), James D. Easton, Z. T. Fulmore, W. C. Walsh, Fred Sterzing, Osceola Archer, Irving Eggleston, H. B. Barnhart, S. M. Berryman, James R. Johnson, W. S. Hotchkiss, J. W. Lawrence, P. De Cordova, Jas. E. Rector, S. A. Posey, E. W. Shands, W. P. Gaines, Oscar H. Cullen, Edward Summerrow, Edward De Normandie.

Trinity County—J. P. Stephenson, J. P. Barnes, John W. Hamilton, Y. W. Randolph, T. D. Stanford, David Hamilton, W. M. Freeman, W. D. Shaw.

Tom Green county has no Notaries Public.

Upshur County—W. C. Cunliffe, G. S. Hart, Gilbert Leroy, W. B. Bailey.

Uvalde county has no notaries.

Van Zandt County—J. G. Kirby, W. L. Haynes, J. C. Wright.

Victoria County—J. S. Munn, A. B. Peticolas, Eugene Sibley, C. L. Thurmond, Charles Le Sage, F. R. Pridham.

Walker County—J. W. Wilson, J. W. Allen, S. T. Burns, sr., J. A. White, Albert Tucker.

Washington County—W. C. Broesche, Robert Bassett, C. C. Garrett, T. J. Newman, J. C. Barnett, Demos R. Ponce, A. Jeffries, Kenny Krug, J. C. Morris, Ben. S. Rogers, Rudolph Krug, Walter Norwood.

Webb County—Lazaro de la Garza, E. F. Hall

Wharton County—W. W. King.

Waller County—John W. Stephenson, H. L. Rankin, John T. Griffin, R. A. Gladdish, Anson J. Harvey.

Williamson County—R. H. Price, L. M. Mays, John W. Posey, Sidney Seymour, Samuel C. Taylor, James Montgomery, George W. Logan, D. V. Grant, J. P. Magill, George Alley, H. B. Shepard.

Wilson County—J. W. Dickey, J. B. Polley.

Wise County—H. H. Bullock, H. D. Donald, Lee Newton, L. J. Raydall, H. C. Ferguson.

Wood county has no Notaries.

Young County—S. W. Montgomery.

Zapata county has no Notaries.

COMMISSIONERS OF DEEDS FOR TEXAS RESIDING IN OTHER STATES.

WITH ADDRESS AND DATE OF APPOINTMENT.

(See *supra*, 44–47, § 19, h, i)

ALABAMA.

George W. Noble, Montgomery, appointed February 28, 1876.
Wm. M. Loomis, Mobile, appointed September 1, 1876.
Samuel C. Muldon, Mobile, appointed December 1, 1876.

ARKANSAS.

Dunbar H. Pope, Little Rock, appointed March 20, 1877.
Mathew Grey, Fort Smith, appointed May 19, 1877.

ARIZONA TERRITORY.

Wm. D. Southworth, Prescott, appointed May 18, 1876.

CALIFORNIA.

N. P. Smith, San Francisco, appointed February 25, 1874.
R. W. Thomas, Sacramento, appointed July 25, 1874.
Edward Chattin, San Francisco, appointed December 21, 1874.
William Hoskins, Oakland City, appointed February 24, 1875.
John H. B. Wilkins, San Francisco, appointed March 9, 1875.
Edward Cadwalader, Sacramento, appointed February 17, 1876.
James R. Lowe, San Jose, appointed May 19, 1876.
Jay E. Russell, San Francisco, appointed October 18, 1876.
Sam. S. Murfey, San Francisco, appointed December 8, 1876.
T. O. Wegener, San Francisco, appointed December 8, 1876.
William Harney, San Francisco, appointed February 2, 1877.

COLORADO.

E. Walden Brewster, Denver, appointed February 13, 1877.

CONNECTICUT.

William L. Bennett, New Haven, appointed April 3, 1874.
Frank F. Starr, Middleton, appointed October 27, 1875.
Edward Goodman, Hartford, appointed January 14, 1876.
John Danforth, New London, appointed March 29, 1876.

DISTRICT OF COLUMBIA.

Joseph T. K. Plant, Washington, appointed April 1, 1874.
Samuel C. Mills, Washington, appointed May 12, 1876.
John W. Frazee, Washington, appointed January 29, 1877.

Tarrant County—J. F. Beall, J. P. Lipscomb, A. J. Chambers, Jesse Jones, J. S. Morris, J. J. Ingram, J. C. Scott, Thomas A. Nance, Zane Cetti, J. R. St Clair, J. P. Smith, T. O. Moody (died), C. C. Cummings, M. J. Brinson, W. E. Kneeland, G. Nance.

Titus County—D. R. Reynolds.

Tyler County—J. M. Rotan.

Travis County—I. G. Searcy (resigned November 28, 1876), James D. Easton, Z. T. Fulmore, W. C. Walsh, Fred Sterzing, Osceola Archer, Irving Eggleston, H. B. Barnhart, S. M. Berryman, James R. Johnson, W. S. Hotchkiss, J. W. Lawrence, P. De Cordova, Jas. E. Rector, S. A. Posey, E. W. Shands, W. P. Gaines, Oscar H. Cullen, Edward Summerrow, Edward De Normandie.

Trinity County—J. P. Stephenson, J. P. Barnes, John W. Hamilton, Y. W. Randolph, T. D. Stanford, David Hamilton, W. M. Freeman, W. D. Shaw.

Tom Green county has no Notaries Public.

Upshur County—W. C. Cunliffe, G. S. Hart, Gilbert Leroy, W. B. Bailey.

Uvalde county has no notaries.

Van Zandt County—J. G. Kirby, W. L. Haynes, J. C. Wright.

Victoria County—J. S. Munn, A. B. Peticolas, Eugene Sibley, C. L. Thurmond, Charles Le Sage, F. R. Pridham.

Walker County—J. W. Wilson, J. W. Allen, S. T. Burns, sr., J. A. White, Albert Tucker.

Washington County—W. C. Broesche, Robert Bassett, C. C. Garrett, T. J. Newman, J. C. Barnett, Demos R. Ponce, A. Jeffries. Kenny Krug, J. C. Morris, Ben. S. Rogers, Rudolph Krug, Walt Norwood.

Webb County—Lazaro de la Garza, E. F. Hall

Wharton County—W. W. King

Waller County—John W [illegible], H. L. Rankin, John [illegible]fin, R. A. Gladdish, Anson [illegible].

Williamson County—[illegible], L. M. Mays, John Sidney Seymour, Samu[illegible] James Montgom[illegible] Logan, D. V. Grant, [illegible]

Wilson County—J. [illegible]

Wise County—H [illegible] Raydall, H. C. F[illegible]

Wood coun[illegible]

Young Cou[illegible]

Zapata co[illegible]

COMMISSIONE[illegible]

COMMISSIONE[illegible]

Willi[illegible]

George W. [illegible]
Wm. M. [illegible]
Samuel C. [illegible]

Dunbar E. [illegible]
Mathew [illegible]

Wm. D. [illegible]

N. P. Smith [illegible]
R. W. Thom[illegible] -74.
Edward [illegible]
William [illegible]
John H. [illegible]
Edward [illegible]
James [illegible] 1874.
Jay E. [illegible] 1877.
[illegible]
Joseph T. [illegible]
Samuel [illegible]
John W. [illegible]

GEORGIA.

A. G. McArthur, Savannah, appointed December 12, 1873.
John W. Burroughs, Savannah, appointed May 12, 1874.
Lionel C. Levy, jr., Columbus, appointed November 24. 1874.
Howell C. Glenn, Atlanta, appointed January 18, 1875. Re-appointed April 16, 1877.
Garland A. Snead, Augusta, appointed June 21, 1876.
B. R. Freeman, Atlanta, appointed March 10, 1877.
Matt. R. Freeman, Macon, appointed July 11, 1877.

INDIANA.

Thomas H. Spann, Indianapolis, appointed February 24, 1877.
Peter Hansbrough Lemon, Indianapolis, appointed April 2, 1877.

ILLINOIS.

Henry T. Thomas, Chicago, appointed November 5, 1873.
Phillip A. Haynie, Chicago, appointed April 18, 1874.
Charles Knobelsdorff, Chicago, appointed May 11, 1874.
J. W. Dickinson, Chicago, appointed October 16, 1874.
J. H. Haveyhorst, jr., Havana, appointed February 16, 1876.
S. S. Willard, Chicago, appointed February 16, 1876.
N. B. Haynes, Chicago, appointed March 8, 1876.
Simeon W. King, Chicago, appointed May 20, 1876.

KENTUCKY.

J. B. Harper, Louisville, appointed February 20, 1874.
Harry Stucky, Louisville, appointed December 28, 1875.
Fred L. Harper, Louisville, appointed February 21, 1876.
W. A. Cooke, Bowling Green, appointed May 8, 1876.

LOUISIANA.

M. L. Ainsworth, New Orleans, appointed March 26, 1874.
Alfred Ingraham, New Orleans, appointed April 2, 1874.
Andrew Hero, jr., New Orleans, appointed April 30, 1874.
J. A. Quintero, New Orleans, appointed November 24, 1874.
B. C. Cuvellier, New Orleans, appointed June 7, 1875.
A. J. Armstrong, New Orleans, appointed June 29, 1875.
Jules Massy, New Orleans, appointed July 23, 1875.
Marcel F. Ducras, New Orleans, appointed August 27, 1875.
William B. Kleinpeter, New Orleans, appointed December 18, 1875.
George W. Christy, New Orleans, appointed May 19, 1876.
F. A. Leonard, Shreveport, appointed June 26, 1876.
James Graham, New Orleans, appointed February 26, 1877.
Dickson Henry Dyer, Shreveport, appointed February 28, 1877.
C. D. Favrat, Baton Rouge, appointed May 14, 1877.
John G. Eustis, New Orleans, appointed June 20, 1877.

J. N. A. Wilson, New Orleans, appointed July 12, 1877.
Gabriel Montegat, Houma, appointed August 8, 1877.

MARYLAND.

William B. Hill, Baltimore, appointed November 1, 1873.
Henry R. Dulany, Baltimore, appointed March 12, 1874.
W. W. Latimer, Baltimore, appointed February 20, 1874.
James S. Key, Baltimore, appointed June 21, 1876.
E. Swinney, Baltimore, appointed July 25, 1876.
Murray Hanson, Baltimore, appointed September 1, 1876.

MASSACHUSETTS.

George T. Angell, Boston, appointed February 16, 1876.
Charles Hull Adams, Boston, appointed September 22, 1876.
James W. Chapman, Boston, appointed December 8, 1876.
Edward J. Jones, Boston, appointed February 26, 1877.
Samuel Jennison, Boston, appointed March 31, 1877.

MISSISSIPPI.

George B. Myers, Holly Springs, appointed May 8, 1876.
W. C. Bishop, Columbus, appointed April 25, 1877.

MISSOURI.

George M. Maverick, Sedalia, appointed February 25, 1874.
J. P. C. Kershaw, St. Louis, appointed July 7, 1874.
C. D. Green, jr., St. Louis, appointed August 6, 1874.
Solomon J. Levi, St. Louis, appointed April 24, 1875.
Julius Robertson, St. Louis, appointed July 14, 1876.
John W. Hodgkin, St. Louis, appointed November 14, 1876.
John P. Coleman, Washington, appointed January 16, 1877.

NEW YORK.

H. A. Bagley, New York, appointed December 12, 1873.
John A. Hillory, New York, appointed March 9, 1874.
James Taylor, New York, appointed March 18, 1874.
Frederick R. Anderson, New York, appointed May 6, 1874.
J. B. Nones, New York, appointed June 11, 1874.
Henry C. Banks, New York, appointed July 13, 1874.
Rufus K. McHarg, New York, appointed October 1, 1874.
George W. Browne, New York, appointed October 22, 1874.
Marvin J. Merchant, New York, appointed November 5, 1874.
Thomas Proctor, New York, appointed February 12, 1875.
Jacob Dubois, New York, appointed September 27, 1875.
George R. Jacques, New York, appointed October 2, 1875.
W. H. Melick, New York, appointed November 8, 1875.

Charles H. Thompson, New York, appointed December 13, 1875.
Horace Andrews, New York, appointed December 24, 1875.
Charles H. Smith, New York, appointed December 24, 1875.
William Edwin Osborne, Brooklyn, appointed February 16, 1876.
S. B. Goodale, New York, appointed February 17, 1876.
Charles W. Anderson, New York, appointed February 23, 1876.
Thomas Kilvert, New York, appointed February 25, 1876.
Richard M. Bruner, New York, appointed March 6, 1876.
Eleazar Jackson, New York, appointed May 15, 1876.
James E. Halsey, New York, appointed May 29, 1876.
N. Pendleton Schenck, New York, appointed December 29, 1876.
Ed. W. Francis, New York, appointed May 1, 1876.
Thomas B. Clifford, New York, appointed May 22, 1877.
Spencer C. Doty, New York, appointed May 1, 1877.
William H. Bowers, New York, appointed May 3, 1877.
Charles Nettleton, New York, appointed June 20, 1877.
Charles Edgar Mills, New York, appointed June 28, 1877.
Edwin F. Corey, New York, appointed June 30, 1877.
Henry Bischaff, Albany, appointed August 10, 1877.
George B. Newell, New York, appointed August 18, 1877.

NEBRASKA.

James Sweet, Nebraska City, appointed May 7, 1875.

NEW HAMPSHIRE.

Albert C. Buzell, Exeter, appointed August 10, 1877.

OHIO.

S. S. Carpenter, Cincinnati, appointed February 2, 1875.
Howard Douglas, Cincinnati, appointed February 28, 1876.

PENNSYLVANIA.

Henry Phillips, jr., Philadelphia, appointed December 8, 1873.
John Russell, Philadelphia, appointed May 1, 1874.
Joseph S. Perot, Philadelphia, appointed May 24, 1874.
John Spurhawk, Philadelphia, appointed September 10, 1874.
Theodore D. Rand, Philadelphia, appointed December 30, 1874.
J. Paul Diver, Philadelphia, appointed September 4, 1875.
Charles Chancey, Philadelphia, appointed January 3, 1876.
H. E. Hindmarsh, Philadelphia, appointed February 28, 1876.
Theodore Albert Stizer, Philadelphia, appointed June 2, 1876.
Samuel L. Taylor, Philadelphia, appointed August 24, 1876.
F. C. Fallon, Philadelphia, appointed March 28, 1877.
Henry Reed, Philadelphia, appointed March 30, 1877.

RHODE ISLAND.

Charles Selden, Providence, appointed May 23, 1874.

TENNESSEE.

E. H. Wyatt, Memphis, appointed April 24, 1874.
R. Dudley Frayser, Memphis, appointed July 3, 1874.
H. L. Clairborne, Nashville, appointed May 4, 1875.
J. M. Coleman, Memphis, appointed June 23, 1875.
M. B. Trezevant, Memphis, appointed September 22, 1876.
J. R. Barry, Gallatin, appointed February 24, 1877.

VIRGINIA.

Edgar M. Garrett, Richmond, appointed January 11, 1876.

WISCONSIN.

Richard Burke, Milwaukee, appointed January 5, 1877.

APPENDIX B.

FORM 1.—*Form of Deed Poll with a Covenant of General Warranty.*

The State of Texas, County of.....

Know all men by these presents, that I..... [*merchant, or whatever his occupation may be*] of the State and county above mentioned [*or of the county of.....and State of.....*] in consideration of the sum of ..... dollars ($.....) to me actually in hand paid by ..... [*farmer, or whatever his occupation may be*], of the county of ..... and State of ..... the receipt of which is hereby acknowledged,(1) have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, convey and confirm unto said ..... all that certain tract or parcel of land situate in the county of ..... and State of Texas, consisting of ..... acres, which is described as follows:

[*Here insert as full and accurate a description of the land as possible, so that it can always be identified with ease and certainty, followed, if practicable, by recitals of the chain of title from the original grantee to the grantor in the deed.*]

To have and to hold all and singular the premises above described unto him, the said ....., his heirs and assigns forever. (2)

And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said ....., his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

In witness whereof I have hereto set my hand and affixed my seal, this ..... day of ....., eighteen hundred and .....

Signed, sealed and delivered in presence of the undersigned, each of whom is also witness to the signature of the other(s) and signs as a witness at the request of the grantor.

..... [SEAL]

.....

.....

.....

NOTE 1. The foregoing form contemplates the insertion of the entire names, with

the occupations, of both the grantor and the grantee. If that be done, it will make it easier to identify them in case of litigation. The recital that the consideration is actually in hand paid—which fact it is desirable should be known to the subscribing witnesses—is important, as it has been held that the title does not pass until it is paid. (See supra, § 11, a, f, k, n.) It may here be added that the attestation clause given is preferred, because, like the seal, it not only tends to prevent the instrument to which it is appended from being attacked, but makes it more likely to be sustained by proof if attacked. It is in all cases preferable that a deed should be acknowledged rather than proven. (For form of certificate of acknowledgment, see supra, § 20, e.) If, however, it cannot be acknowledged, but has to be proven for record by a subscribing witness or by subscribing witnesses, for form of certificate of proof, see supra, § 22, f.

NOTE. 2. Any of the common covenants, in addition to that of general warranty (see supra, § 14, a-i), or any of the special covenants suggested supra, § 14, q, may be incorporated in this form.

FORM 2.—*Form of Deed Poll with Covenant of Special Warranty.*

The State of Texas, County of.....

Know all men by these presents, that I, ..., [*merchant, or whatever his occupation may be*], of the county and State above mentioned [*or, of the county of ..... and State of .....*], in consideration of the sum of ..... dollars ($.....) to me actually in hand paid by ..... [*farmer, or whatever his occupation may be*], of the county of ..... and State of....., the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, convey and confirm unto said ..... all that certain tract or parcel of land situate in the county of ..... and State of Texas, consisting of..... acres, which is described as follows:

[*Here insert as full and as accurate a description of the land as possible, so that it can be identified with ease and certainty—followed, if practicable, by recitals of the chain of title from the original grantee to the grantor in the deed.*]

To have and to hold, all and singular, the premises above described, unto him, the said ....., his heirs and assigns forever.

And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend, all and singular, the said premises unto the said ....., his heirs and assigns, against every

person whomsoever, lawfully claiming, or to claim, the same, or any part thereof, by, through or under me.

In witness whereof, I have hereto set my hand and affixed my seal, this ..... day of ....., eighteen hundred and ..... (18.....)

Signed, sealed and delivered in presence of the undersigned, each of whom is also witness to the signature of the other(s), and signs as a witness at the request of the grantor.

.....[SEAL.]

.....

.....

.....

NOTE. For explanation as to the authentication of the above, see note 1 to Form 1.

FORM 3.—*Form of Deed conveying Land which is the Separate Property of a Married Woman.**

The State of Texas, County of .....

Know all men by these presents, that we, ... and ....., his wife, of the State and county above stated, in consideration of the sum of .....dollars ($.....) unto the said ..... in hand paid on the sealing and delivering hereof, the receipt of the actual payment of which sum is hereby acknowledged, by ....., of the county of .....and State of..... have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, convey and confirm the certain tract or parcel of land situate in the county of ..... and State of Texas, which is the separate property of the said ....., whose husband joins

* What is the separate property of a married woman? "All property, both real and personal, of the wife owned or claimed by her before marriage, and that acquired afterwards by gift, devise or descent." (P. D., 775-6, Art. 4641.) The increase of such property is also declared by the Act to be her separate property, and it provides that "during her marriage the husband shall have the sole management of all such property." As a matter of course, the property embraced in marriage settlements is also the separate property of the wife. (See supra, 100, 191, § 39, a-d.) All other property acquired during the marriage by either the husband or the wife is community property, and during the coverture may be disposed of by the husband, though on the death of either, the one-half passess to the child or children. (P. D., 777, Art. 4640. See also supra, 102, § 40, d.)

with her in conveying the same, which is more particularly described as follows: [*Here insert a full and special description of the land.*] To have and to hold all and singular the premises above mentioned, unto the said ....., his heirs and assigns forever. And we and each of us, for ourselves, our heirs, executors and administrators, do hereby covenant jointly and severally as follows: [*Here insert the covenants agreed upon; for example: First, that the said ..... has the fee simple title to the land above described. Second, that the same is free and clear of all incumbrances, liens for taxes included, whatever. And third, that we will warrant and forever defend the same against every person whomsoever lawfully claiming or to claim the same, or any part thereof.*] (1.)

In witness whereof we have hereunto set our hands and affixed our seals, this ..... day of ....., eighteen hundred and .....

Signed, sealed and delivered in presence of the undersigned, each of whom is also witness to the signature of the other(s), and signs as a witness at the request of each of the grantors. (2.)

.....

.....

.....

.....[SEAL.]

.....[SEAL.]

[For the form of acknowledgment adapted to the foregoing deed, see *supra*, 53, § 21, h.] —ED.

NOTE 1. Any lawful covenants may be agreed upon and inserted. They should be inserted distinctly and separately—not blended. The covenants given above as examples are in most cases desirable on the part of the purchaser, together with another stipulating for fixed liquidated damages in the event of a breach of any of the covenants in the deed.

NOTE 2. All deeds should be witnessed, because the more numerous and better known the subscribing witnesses, the less liable is a deed to be attacked. The subscribing witnesses and the seals, or scrolls as their substitute, are essential to cause the deed to convey the fee simple; and subscribing witnesses are certainly good witnesses as to the husband, though an acknowledgment on a privy examination is indispensable as to the wife. It is the safer practice to have them see the actual payment of the consideration, where the separate property of the wife is conveyed.

FORM 4.—*Form of Deed of Trust upon Land to secure the payment of a Debt.*

The State of Texas, County of .....

Know all men by these presents, that I, ...,(1) in consideration of the sum of..... dollars ($.....) this day loaned to me by....., of ....., have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell, convey and confirm in fee simple unto ....., of the county of .... and State of Texas—the express acceptance of the trust hereby created being waived—the certain tract or parcel of land situate in the State of Texas and county of ....., which is described as follows:

[*Here insert a description of the land sufficiently full and special to identify it without resorting to extraneous evidence.*]

To have and to hold, unto him the said [*trustee*], his heirs, successors and assigns forever. And I for myself, my heirs, executors and administrators, do hereby covenant with the said ..... [*the lender*], his heirs and assigns, as follows: [*Here insert such covenants as may be agreed upon, numbering them First, Second, etc.—for example the covenants so numbered in the preceding Form* 3.] In trust, nevertheless, for inasmuch as I am indebted to..... above mentioned in the sum aforesaid, for which I have given him my promissory note payable to my own order and endorsed by myself, at ..... on the..... day of ....., eighteen hundred and ....., with interest thereon at the rate of..... from .....(date) until paid.

Now if the said sum, with interest as stated, is paid as stipulated, then and in that event this instrument is to become void and of none effect; but in case said sum, with interest, or any part thereof, is not paid as stipulated when the same becomes due, then and in that event the said .... (*i. e. the trustee*), or in case of his death or failure from any cause to act,....., of....., as his substitute; and in case of his neglect or failure from any cause to act, the sheriff for the time being of ..... county, in the State of Texas, or any one of his deputies as his substitute, shall proceed to advertise and sell and distribute the proceeds as in case of a sale under execution, the above described tract of land, and shall convey, with a covenant of general warranty, the same to the purchaser or purchasers thereof; the trustee acting first deducting the costs and commissions allowed by law to sheriffs for advertising and selling under execution, as compensation for his services as trustee. And I do hereby further covenant for myself, my heirs, executors and administrators as follows: (Fourth.) That in the sum first above aforesaid as liquidated damages, and not as a penalty, the reci-

tals to that effect in the deed made by the trustee in case of a sale shall be conclusive evidence of each of the facts essential to the validity of the sale. (Fifth.) That inasmuch as this instrument has been made a deed of trust instead of a mortgage with or without a power to sell, in order that it may be enforced without the necessity of any order of any court, whether I be living or dead, at the time it stipulates that it shall be enforceable, and that the unnecessary expense and delay of any such order may be avoided—in the like sum as liquidated damages, and not as a penalty—that no order of sale of any court shall be had, and that no other action shall be had in the county court, in case of my death, touching the property embraced in this deed of trust than to cause to be returned in the inventory of my estate, the interest, if any there be therein, that may then belong to my estate under this trust. (Sixth.) That in case any order of sale of the property embraced in this deed of trust is obtained, caused or suffered by my heirs, executors, administrators or assigns, or any of them, then and in that event they shall pay unto said .... (*lender*), his heirs or assigns, the sum of ..... dollars ($.....) as liquidated damages and not as a penalty. (Seventh.) That in case the trust hereby created is not enforced within four years next after the debt hereby secured becomes due, then and in that event the trust hereby created shall cease and be forever discharged, and the .....(*property*) herein described shall become and be as free and clear thereof of record as if this deed of trust had never been made.

In witness whereof I have hereunto set my hand and affixed my seal, this ..... day of ....., eighteen hundred and.....

Signed, sealed and delivered in presence of the undersigned, each of whom is also witness to the signature of the other(s) and signs as witness at the request of the maker.

.....

.....

.....

..... [SEAL]

[It is preferable that the deed of trust should be acknowledged, and in that event the form of certificate of acknowledgment given *supra*, 48, § 20, e, will be sufficient. If, however, it is proven, the form of certificate (on proof from actual knowledge) for record given *supra*, on pages 58-9, § 22, f, is suggested as being better than a certificate of proof *not* from actual knowledge, which is also authorized by the statute. (See *supra*, 56, § 22, b; and 59, § 22, h.)—ED.]

NOTE 1. This form does not contain blanks or spaces for the occupation of the grantor or maker, and of the cestui que trust or beneficiary, because in such transac-

tions as the securing a debt by a deed of trust—as they are acted upon within a comparatively short time—it is next to impossible that any question touching identity should arise.

NOTE 2. The foregoing form differs from the printed forms in use in the following particulars: First—It contains a waiver of the acceptance of the trust. Second—It contemplates covenants protective of the title of the real estate conveyed in trust. Third—It authorizes the trustee to convey with a covenant of general warranty. (Indeed, it might be agreed that he should convey with any other specified covenant or covenants.) Fourth—It contains covenants against an order of sale in case of the death of the grantor or maker. And fifth and last—It contains a covenant which makes the title clear of record in four years if, as is too often the case, a formal satisfaction, or release, duly authenticated, be not registered.—Ware v. Bennett, 18 Texas, 794.

NOTE 3. Married women cannot now execute deeds of trust—their husbands joining, of course—except for purchase money, or mechanics', etc., liens. (See supra, 50, § 21, d.) As the title does not pass until the purchase money is paid where a sale of land is made on a credit, it is the more direct and economical, and an equally safe, mode of procedure to have it evidenced by a title bond, rather than by a deed which does not pass the title and a deed of trust, which render the execution of a third instrument necessary to make the title appear clear of record. (See supra, 72, § 30, i, j.)

FORM 5.—*Form of Promissory Note—framed to prevent the owner thereof from loss if it be not paid at maturity and if collectable by suit.*

$..... ....., Texas, ..., 18.....

.... after date I promise to pay to the order of .....(1), at .....(2), ...dollars ($.....) for value received, with interest at the rate of ..... per cent. per annum from ..... until paid; and if the same be not fully paid at maturity, to also pay ten per cent. on said sum and interest as an attorney's fee, together with any additional costs or expenses that may be incurred in collecting this note (3).

....

1. If this blank be filled by the word "myself," as is frequently done where the person receiving the note wishes to transfer it without indorsing it himself, it must be indorsed by the maker at the time it is made.

2. If it be made expressly payable at a particular place, it can be sued upon in the county in which that place is situate.—P. D., 346, Art. 1423 (4th).

3. If the words "In witness whereof I have hereunto set my hand and affixed my seal" be added, and a seal or scroll appended to the signature, those additions convert it into what is termed by our courts "a note in writing under seal," the consideration of which cannot be impeached otherwise than by a sworn plea. (See supra, 36, § 16, n, v, w and x.)

FORM 6.—*Form of Satisfaction and Release of a Lien* (1) *which is of record, framed to cause the title to the land incumbered thereby to be and appear free and clear thereof of record.*—See Ware v. Bennett, 18 Texas, 794.

The State of Texas, County of.....

Know all men by these presents, that I, ... of....., in consideration that ..... of .....has paid unto me the sum of..... dollars ($.....), the receipt whereof is hereby acknowledged, to secure the payment of which I hold a [*Here describe the lien so accurately that it may be identified with ease and accuracy*]. Now, inasmuch as the above described [*mortgage, judgment or other lien, specifying it*] has been fully satisfied and extinguished, I have granted and released, and by these presents do grant, release and confirm unto said ..... the tract of land embraced in said [*mortgage, judgment or other lien*]. To have and to hold the same to him and his heirs and assigns forever. And I do hereby, for myself, my heirs, executors and administrators, covenant with said ....., his heirs, executors and administrators, in the sum of ..... dollars ($.....). as liquidated damages and not as a penalty, that the said tract of land is free and clear of all incumbrances done or suffered by or through me to the date hereof inclusive. (2)

In witness whereof, etc., [*as in case of a deed poll*]. (See *supra*, Form 1, p. 155; and as to its authentication, see *supra*, 155–6, note 1.)

NOTE 1. If a deed of trust shows on its face that it is not intended to be a lien (such as a mortgage with a power to sell), but is made to vest the fee simple title conditionally, if the money (the non-payment of which authorizes the sale) is not paid in accordance with its terms, the land, in case it does not contain the last covenant embodied in Form 3, should be re-conveyed. Such a deed of trust may be regarded—as the parties intended it to be—as a conditional sale (see supra, 19, § 8, p, r) and not as a lien.

NOTE 2. To guard against a transfer of record of the lien, or a judgment lien against the holder of the lien released.

MECHANIC'S LIEN.

A mechanic's lien (when not on a homestead) arises when labor or material is furnished and not paid for, by operation of Sec. 37 of Art. 16 of the Constitution of 1876, and not by contract. Chapter 81 of the General Laws of 1876, 91–92, cannot increase, diminish or amend the lien given by the Constitution, of which no form need, or can, be framed.

Such lien, when on a homestead, must be created by deed, in accordance with Sec. 50, Art. 16, of the Constitution. (See *supra*, 50, § 21, d.)

GENERAL INDEX.

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